

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

iRACING.COM MOTORSPORT SIMULATIONS, X
LLC, a Delaware Limited Liability Company, : Civil Action No.
Plaintiff, : 05-11639 NG
v. :
TIM ROBINSON, individually and d/b/a :
www.ow-racing.com, www.torn8alley.com and :
www.First-Racing-Sucks.com :
Defendant. :
X

AFFIDAVIT OF
IRWIN B. SCHWARTZ IN
SUPPORT OF MOTION
FOR PARTIAL
SUMMARY JUDGMENT

I, Irwin B. Schwartz, upon oath depose and say as follows:

1. I am an attorney duly admitted in the Commonwealth of Massachusetts and this Court and a member of the law firm Petrie Schwartz LLP ("Petrie Schwartz"). My firm is counsel to plaintiff iRacing.com Motorsport Simulations, LLC, ("iRacing"), plaintiff in this matter.

2. In or around August 2005, iRacing downloaded several files from Robinson's websites, including owr2k5_v1.0.0.1.zip (the "OW-Racing 2005 Mod") and owsc_nocd_temp.zip (the "NO-CD File").

3. In November 2005, iRacing provided Petrie Schwartz with all of the files it downloaded from Robinson's websites on a CD designated "Robinson Data" (the "Robinson Data CD").

4. Petrie Schwartz thereafter provided the Robinson Data CD to iRacing's expert, Rance J. DeLong ("DeLong") in November 2005.

5. In the November 15, 2005 deposition of Mr. Robinson, I had him authenticate the files downloaded by iRacing from Mr. Robinson's websites and later Mr. Robinson confirmed in his document responses that the files were the same as what he made available on his websites. Defendant Tim Robinson's Responses to Plaintiff's Second Request for Production of Documents, Responses to Requests 2, 5. A true and correct copy of Defendant Tim Robinson's Responses to Plaintiff's Second Request for Production of Documents is attached as Exhibit A.

6. As Exhibit B, I hereby attach a true and correct copy of the relevant excerpts of the November 15, 2005 Deposition of Defendant Tim Robinson cited to in iRacing's Memorandum Of Points And Authorities In Support Of Motion For Partial Summary Judgment.

7. As Exhibit C, I hereby attach a true and correct copy of Defendant Tim Robinson's Answers to Plaintiff's First Set of Interrogatories.

SUSCRIBED AND SWORN TO on this 11th day of August 2006.

/S/ Irwin Schwartz

Irwin B. Schwartz

Certificate of Service

I, Irwin B. Schwartz, attorney for Plaintiff iRacing.com Motorsport Simulations, LLC, hereby certify that on this 11th day of August 2006, I filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to: Joseph F. Ryan, Lyne Woodworth & Evarts LLP, 600 Atlantic Avenue, Boston, MA 02210, counsel for Defendant Tim Robinson.

/S/ Irwin Schwartz

Irwin B. Schwartz

11 *****

12 TELEPHONIC DEPOSITION OF TIM ROBINSON

VOLUME 1

COPY

ANSWERS AND DEPOSITION OF TIM ROBINSON, produced as a witness at the instance of the Plaintiff, taken in the above-styled and -numbered cause on the 15th day of November, 2005, A.D., beginning at 9:02 a.m., before Brandy Paliotta, a Certified Shorthand Reporter in and for the State of Texas, in the offices of Hughes & Luce, located at 1717 Main Street, Suite 2800, Dallas, Texas, in accordance with the Federal Rules of Civil Procedure and the agreement hereinafter set forth.

1 A P P E A R A N C E S

2 FOR THE PLAINTIFF:

3 IRWIN SCHWARTZ

4 Petrie & Schwartz, L.L.P.

5 500 Boylston Street, SUite 1860

6 Boston, Massachusetts 02116

7 (617) 421-1800

8 (617) 421-1810 (Fax)

9

10 FOR THE DEFENDANT:

11

12 JOSEPH RYAN (Via Telephone)

13 Lyne, Woodworth & Evarts, L.L.P.

14 600 Atlantic Avenue

15 Boston, Massachusetts 02210

16 (617) 523-6655

17 (617) 248-9877 (Fax)

18 ALSO PRESENT:

19 RANCE DELONG - iRacing (via telephone)

20 STEVE MYERS - iRacing (via telephone)

21 LISA JORDAN - iRacing (via telephone)

22 WITNESS' ADDRESS:

23 Not Given

24

25

1 Q. -- you just testified to?

2 And you installed that one on your computer
3 as well?

4 A. Yes.

5 Q. And since you haven't deleted -- best I can
6 tell -- almost anything since this case started, all these
7 things are still on your computer, correct?

8 A. Yes.

9 Q. Okay. And this is your home computer that you
10 told me about at the beginning of this --

11 A. Yes.

12 Q. -- session?

13 Let's go back to Exhibit 2 for a moment,
14 which is the second request for production of documents.
15 Did you do any search of your files to see if you had
16 anything that's requested by this document request?

17 A. Yes.

18 Q. What did you do?

19 A. Searched my computer.

20 Q. And when did you do that?

21 A. Shortly after receiving this particular document.

22 Q. And that -- if you look at the certificate of
23 service, which is the last page of this document -- I think
24 you've got that -- yeah -- that shows it was served in
25 September 23rd. So to the best of your recollection, you

1 did that search sometime in late September?

2 A. Yes.

3 Q. Okay. And did you find anything responsive to
4 this request?

5 A. No.

6 Q. Did you look anywhere else other than your
7 computer at home?

8 A. Yes.

9 Q. Where else did you look?

10 A. I looked in a discussion forum on ow-racing.com.

11 Q. Anywhere else?

12 A. Not that I recall.

13 Q. Now, the discussion forum on ow-racing.com, is
14 that maintained on your computer at home?

15 A. No.

16 Q. Where is that?

17 A. It's at a web host.

18 Q. Who is the web host?

19 A. Virtbiz.com.

20 Q. V-E-R-T?

21 A. Excuse me?

22 Q. V-E-R-T?

23 A. V-I-R-T.

24 Q. V-I-R-T. And who is the -- is that your website,
25 ow-racing.com?

1 A. Yes.

2 Q. Okay. So do you pay virtbiz.com to host it?

3 A. Yes.

4 Q. And do they archive the materials, such as the
5 discussion forum?

6 A. I have no idea.

7 Q. Okay. Well, you were able to look through
8 something, correct?

9 A. It's the information that's there.

10 Q. Okay. It's on the web -- it's on the website?

11 A. Yes.

12 Q. Okay. Does cw-racing.com have a posting
13 function -- in other words, members of that site can post
14 each other information?

15 A. In the discussion forums, yes.

16 Q. Okay. Privately?

17 A. Yes.

18 Q. And does virtbiz.com maintain an archive of those
19 postings?

20 A. I don't know.

21 Q. Did you -- when you said you checked on that
22 website, what files or what discussion boards did you
23 check -- or maybe there's just one?

24 A. There's -- there's one discussion forum.

25 Q. Okay. And so you went through that?

1 A. Yes.

2 Q. Looking to see whether you could find anything on
3 that that is called for in this second request for
4 production of documents?

5 A. That's correct.

6 Q. And you didn't find anything?

7 A. No, I did not.

8 Q. Okay. Did you look anywhere else other than
9 that -- your own PC at home and the discussion forum at
10 ow-racing.com?

11 A. I looked through all this litany of documents that
12 I have here, which are the documents related to this case,
13 but that's all.

14 Q. All right.

15 MR. SCHWARTZ: So the record reflects, the
16 witness was pointing at a three-ring binder he has in front
17 of him that appears -- correct me if I'm wrong,
18 Mr. Robinson -- to be the pleadings in this case.

19 A. Yes.

20 Q. (BY MR. SCHWARTZ) Are there -- are there other
21 materials in that binder?

22 A. No.

23 Q. Okay. I think you mentioned earlier that you were
24 a member of the Torn8oAlley --

25 A. Yes.

1 Q. Okay. When is the next one coming up?

2 A. Saturday.

3 Q. Okay. And have you gotten an e-mail or something
4 that tells you what the IP address is for you to connect to
5 that race on Saturday?

6 A. I don't know if I got an e-mail or I just checked
7 a particular website associated with that particular event.

8 Q. Okay. So a way to -- a way to find out where
9 these servers are is to check websites?

10 A. No. That's not what I said.

11 Q. Okay.

12 A. I said for this particular race, I was provided --
13 it may have been via e-mail or it may have been simply via
14 a dedicated website associated with this particular
15 event --

16 Q. Uh-huh.

17 A. -- that lists messages from people that submit to
18 it or whatever -- however you want to describe that.

19 Q. Uh-huh.

20 A. And one of those listings is that the IP address
21 and port number associated with this particular server.

22 Q. Okay. But you don't remember how you learned of
23 where that is; is that right?

24 A. It's part of the process to compete in this race.

25 Q. Okay. Okay. So separate from this race, are

1 there other series that you are part of that use NASCAR
2 2003 as a base? And when I say "other," I mean other than
3 Torn8oAlley products.

4 A. No.

5 Q. Okay. Have you deleted anything off of that USA
6 Mobility server since the commencement of this lawsuit?

7 A. The server located at USA Mobility?

8 Q. Yes. The one at Plano, Texas?

9 A. No, I have not.

10 Q. What does USA Mobility do?

11 A. They're a nationwide messaging company.

12 MR. SCHWARTZ: Do you want to take -- do you
13 want to take a -- we've been going for about an hour now.
14 Do you want to take a break or are you okay to keep going?

15 THE WITNESS: I could use a break.

16 MR. SCHWARTZ: Okay. Let's go off the record
17 for a moment.

18 (Break was taken from 10:00 a.m.

19 to 10:05 a.m.)

20 Q. (BY MR. SCHWARTZ) Mr. Robinson, you remember
21 you're still under oath?

22 A. Yes.

23 Q. Are you familiar with a website known as
24 first-racing-sucks.com?

25 A. Yes.

1 Q. Do you have a relationship to that website?

2 A. Yes.

3 Q. What is that?

4 A. I own it.

5 Q. When did you create that website -- or when did
6 you acquire it?

7 A. I don't recall specifically, but -- yeah, I
8 just -- I don't recall.

9 Q. Who's the host of that website?

10 A. Godaddy.com.

11 Q. And did -- how -- how did you come to register
12 that name through godaddy.com?

13 A. Can you rephrase that?

14 Q. Yeah. Let's see, when I use the term "own a
15 website," what do you understand that to mean?

16 A. That means I own the domain and I'm responsible
17 for the content that goes on it.

18 Q. Okay. And when -- to own a domain -- own the
19 domain, that requires that you register the domain,
20 correct?

21 A. That's correct.

22 Q. Okay. So for example, for torn8alley.com --

23 A. Right.

24 Q. -- you own that domain as well, correct?

25 A. Yes.

1 Q. And you registered that domain?

2 A. Yes.

3 Q. And it's registered to VIRTBIZ, correct -- I mean,
4 in the sense that VIRTBIZ is the host for that domain?

5 A. VIRTBIZ is the host for that domain. The domain
6 is not registered to VIRTBIZ, though.

7 Q. Okay. Understood. So now, let's focus for a
8 moment on first-racing-sucks.com. To whom is
9 first-racing-sucks.com registered?

10 A. It's registered to Domains by Proxy.

11 Q. Yeah.

12 A. I mean --

13 Q. And tell us what Domains by Proxy does.

14 A. As I understand it, it is a method for keeping
15 registration information about a domain private.

16 Q. Okay.

17 A. So they proxy that information. So if you go do a
18 search, which you have diligently done, it shows up that
19 Domains by Proxy is the owner of that particular domain --

20 Q. Right.

21 A. -- when, in fact, they're just -- they are the --
22 I don't know what you call it --

23 Q. They're the front for who owns the domain,
24 correct?

25 A. Those are your words.

1 MR. RYAN: Objection.

2 Q. (BY MR. SCHWARTZ) Well, the reason that someone
3 would use Domains by Proxy is if they didn't want the rest
4 of the Internet world to know that they registered the
5 name, correct?

6 MR. RYAN: Objection.

7 A. I have no idea.

8 Q. (BY MR. SCHWARTZ) Well, why did you use Domains
9 by Proxy?

10 A. It was an option presented to me.

11 Q. By whom?

12 A. By GoDaddy.

13 Q. And so what was GoDaddy's role in the creation of
14 first-racing-sucks.com?

15 A. They were simply the mechanism by which I
16 registered that domain.

17 Q. Okay. So one of the options that GoDaddy gave you
18 was to register through Domains by Proxy?

19 A. Yes.

20 Q. What were the other options, in your recollection?

21 A. There's a private and nonprivate registration. I
22 chose the private registration, which turns out to be going
23 through Domains by Proxy.

24 Q. Does it cost more to choose the private?

25 A. Yes.

1 Q. When was it that you had these communications with
2 GoDaddy in which you were given this option?

3 A. When I registered the domain name.

4 Q. Which was when, as best you can recall?

5 A. I don't -- I don't recall.

6 Q. And how did you communicate with GoDaddy for the
7 registration of the domain name?

8 A. Over the Internet.

9 Q. By e-mail?

10 A. No. You go to their website.

11 Q. Okay. And you fill out forms?

12 A. Yes.

13 Q. It's some digital form that you fill out at their
14 website; is that right?

15 A. At some point, I'm sure I filled out a form
16 because I have multiple domains registered there. So I
17 have an account --

18 Q. Okay.

19 A. -- with them, so I think they -- my information is
20 readily available. So if I want to register a domain, it
21 takes five minutes.

22 Q. Okay. Why -- why did you choose to use
23 godaddy.com to register First-Racing-Sucks rather than
24 VIRTBIZ?

25 A. VIRTBIZ is not a registrar. They're a hosting

1 company.

2 Q. Okay.

3 A. GoDaddy is a registrar of domain names.

4 Q. Did you use GoDaddy to register Torn8oAlley?

5 A. Yes.

6 Q. Okay. But as to that one, you did not choose the
7 option that called for privacy; is that right?

8 A. That domain was transferred to me by the previous
9 owner.

10 Q. Who was that?

11 A. The previous owner?

12 Q. Uh-huh.

13 A. A guy in Atlanta.

14 Q. What's his name.

15 A. David.

16 Q. Last name?

17 A. Kesterson.

18 Q. How do you -- how did -- how did it come that
19 David Kesterson transferred you torn8oalley.com?

20 A. He asked me if I wanted it.

21 Q. Asked you by e-mail or by -- over the phone or in
22 person?

23 A. Actually, I think he asked me in person.

24 Q. How do you know Mr. Kesterson?

25 A. He was the original owner of torn8oalley.com.

1 Q. Well, how did you know him, though, if he was the
2 original owner? Were you already a member of
3 torn8alley.com?

4 A. When I -- when the -- say that again.

5 Q. I asked you how you knew Mr. Kesterson, and you
6 said he was the original owner. That doesn't tell me how
7 you knew him, that just tells me what his relationship was
8 with the website.

9 A. I was a member at torn8alley.com.

10 Q. Okay. How long were you a member at
11 torn8alley.com before Mr. Kesterson offered you the
12 website -- or he actually offered you the domain name,
13 correct?

14 A. And the website and everything associated with
15 torn8alley.com.

16 Q. Oh, okay. Was that on a server somewhere and he
17 was offering you the server?

18 A. Clarify server.

19 Q. Okay. I'm sorry. Let me go back. I'm getting
20 ahead of myself.

21 So how long were you a member of
22 torn8alley.com before Mr. Kesterson offered you the
23 entirety of torn8alley.com?

24 A. I think about two years.

25 Q. And when is it that Mr. Kesterson offered you

1 torn8alley.com?

2 A. I don't recall specifically, but the first time
3 sometime in 2004.

4 Q. And when is it that you actually took control of
5 it?

6 A. January of 2005.

7 Q. And did you pay money for it?

8 A. Yes.

9 Q. What did you pay?

10 A. A dollar.

11 Q. Did you sign a contract, or was there some sort of
12 formal agreement between you and Mr. Kesterson?

13 A. Yes.

14 Q. And do you have a copy of that contract in your
15 files?

16 A. No.

17 Q. Was it -- that contract that was between you and
18 Mr. Kesterson, was that in writing on paper or was it
19 digital --

20 A. Yes.

21 Q. Okay. Have you looked for that -- no one ever
22 provided you a copy of that?

23 A. I have a copy of it.

24 Q. Oh. I asked you whether you had a copy in your
25 files?

1 A. You asked if I had a copy here.

2 Q. Oh, no. I'm sorry. I said in your files. I
3 didn't mean limited to what's in front of you.

4 A. Yes, I have a copy of --

5 Q. Okay.

6 A. -- the contract.

7 Q. Did you pay any other consideration other than the
8 dollar?

9 A. No.

10 Q. And other than the domain name -- what else did
11 you acquire from Mr. Kesterson other than the domain name,
12 torn8oalley.com?

13 A. The race server that we discussed.

14 Q. Okay. Anything else?

15 A. The website -- I mean, the files associated with
16 the previous website.

17 Q. Okay.

18 A. That's about it.

19 Q. Now, torn8oalley.com, at that time, was that
20 hosted prior to your acquisition? Was it hosted by
21 VIRT- -- excuse me -- VIRTBIZ?

22 A. No.

23 Q. Some other domain name host had that; is that
24 correct?

25 A. Yes.

1 Q. Why did Mr. Kesterson want to sell you this, do
2 you know?

3 MR. RYAN: Objection.

4 A. You have to ask him.

5 Q. (BY MR. SCHWARTZ) You -- he never told you why he
6 wanted to sell it?

7 A. Not that I recall.

8 Q. Why did you want to buy it?

9 A. Because I didn't want to see the site go away. I
10 want -- you know, continued to race and support the -- the
11 members, so -- I had the wherewithal, the skills, whatnot,
12 to run a website and do those kind of things, so it was a
13 perfect fit as it were.

14 Q. Okay. Now, you mentioned -- let's go back to
15 first-racing-sucks.com. You mentioned that you registered
16 that name through GoDaddy and you used their privacy
17 option.

18 A. Yes.

19 Q. What other websites do you maintain through
20 GoDaddy?

21 A. Say that again.

22 Q. Well, I think you testified earlier that you had
23 an account with GoDaddy --

24 A. Correct.

25 Q. -- and it was quite easy for you to register

1 first-racing-sucks.com because you had this account?

2 A. Correct.

3 Q. And I thought I understood you to say you had an
4 account with them because you had other websites?

5 A. No. I said I had other domains.

6 Q. Oh, domains. I'm sorry. What other domains do
7 you have with GoDaddy?

8 A. Torn8oalley.com, torn8oalley.net, torn8oalley.us,
9 ow-racing.net.

10 Q. Any others?

11 A. Simracingalliance.com, Simracingalliance.net, I
12 believe. I'd have to look at my account. I don't recall
13 every single domain that I have.

14 Q. Okay.

15 A. As it relates to this particular case,
16 torn8oalley.com, ow-racing.com, first-racing-sucks.com,
17 torn8oalley.net and that's it.

18 Q. The Sim Racing Alliance, does that have anything
19 to do with NASCAR 2003?

20 A. No.

21 Q. Do you get a bill or some sort of statement from
22 GoDaddy that reflects all the domain names that you've
23 registered with them?

24 A. No.

25 Q. Do you pay some sort of service fee or some sort

1 of compensation to GoDaddy for registering all these names?

2 A. At the time of registration.

3 Q. They send you a confirmation that says you've
4 succeeded in registering --

5 A. Yes.

6 Q. -- such and such a name?

7 A. Yes.

8 Q. And you pay them whatever it is?

9 A. You pay them before you get the confirmation.

10 Q. Okay.

11 A. You pay them online.

12 Q. You pay with a credit card?

13 A. Yes.

14 Q. Why did you choose to electric the privacy option
15 for first-racing-sucks.com?

16 A. Because I didn't want to be bombarded with spam.

17 Q. Any other reasons?

18 A. No.

19 Q. Now, there was a time, was there not, that you
20 were a beta tester for iRacing -- or First Racing, as it
21 was known at the time?

22 A. For a very short period, yes.

23 Q. While -- can you help us, when was that that you
24 were a beta tester?

25 A. Approximately the end of December 2004 to the last

1 part of January 2005.

2 Q. And did you register first-racing-sucks.com during
3 that period?

4 A. During what period?

5 Q. The period that you were a beta tester that you've
6 just identified?

7 A. No.

8 Q. Why did you discontinue acting as a beta tester
9 for First Racing?

10 A. As I've said in an e-mail to them, between my
11 responsibilities at work, other Sim Racing sites and being
12 handed divorce papers, I didn't have the time to prepare
13 adequately for the races that were being conducted.

14 Q. And that -- that was around January 2005 you
15 communicated that?

16 A. That's correct.

17 Q. And then when did you set up
18 first-racing-sucks.com, to the best of your recollection?

19 A. As I said, I don't recall the exact date.

20 Q. What happened -- as of January 2005, why did you
21 choose the name -- strike that.

22 Why did you choose the name
23 first-racing-sucks.com to register?

24 MR. RYAN: Did that question have a date as
25 part of it, because I don't think he's given a date unless

1 I missed something.

2 MR. SCHWARTZ: It didn't have a date, but it
3 was open ended. It just asked him why he chose the name.

4 MR. RYAN: But you said why he chose it in
5 January?

6 MR. SCHWARTZ: No. It had no date in it.

7 MR. RYAN: Okay.

8 A. I actually don't recall a specific reason for --
9 for choosing that name other than it was modeled after
10 their site at the time, which was firstracing.net.

11 Q. (BY MR. SCHWARTZ) And you wanted to add the word
12 "sucks" to firstracing.net?

13 A. No. I wanted to add the word "sucks" to First
14 Racing.

15 Q. Okay. Do you recall why you wanted to add the
16 word "sucks" to First Racing at the time you registered it?

17 A. No. I don't recall the specific reason.

18 Q. Do you recall generally the reason?

19 A. I suppose that generally speaking in the Sim
20 Racing community, there was a level of dissatisfaction
21 associated with First at the time, and it seemed
22 appropriate.

23 Q. Now, would you say that that level of
24 dissatisfaction that you've just identified, was that true
25 as of January 2005 when you discontinued your efforts as a

1 beta tester for First?

2 A. No.

3 Q. What, to your recollection, caused that level of
4 dissatisfaction, if you know?

5 A. What appeared to me personally?

6 Q. Yeah.

7 A. My interpretation from visiting various websites
8 was that the general Sim Racing community was rather pissed
9 off at Dave Kaemmer and his bunch about shutting down at
10 the time a group known as RedLine Developments for a mod
11 that they were creating known as the GTP mod, which by the
12 way, is another mod that I have installed that I --

13 Q. You forgot about?

14 A. -- forgot about previously.

15 Q. So your recollection is that sometime after
16 January of 2005, you perceived that there was a
17 dissatisfaction among -- I think you said the Sim Racing
18 community; is that right?

19 A. Yes.

20 Q. With the actions of First Racing?

21 A. Correct.

22 Q. And that relates to some sort of interaction
23 between First Racing and the RedLine people?

24 A. To the best of my recollection, that's where it
25 started, yes.

1 Q. Okay. And to the best of your recollection, is
2 that what motivated you to register the name
3 **first-racing-sucks.com?**

4 A. I don't think so. I don't think at that point --
5 although I don't recall the exact timing of when all that
6 happened, but I don't think the RedLine Developments
7 episode, as it were, really had much influence on me
8 personally.

9 Q. Okay. So was there something else that had
10 influence on you that motivated you to register the name
11 **first-racing-sucks.com?**

12 A. No. I don't think there was anything specific
13 that motivated me other than just a general dissatisfaction
14 with First Racing at the time.

15 Q. Okay. Other than the situation you described with
16 RedLine, which I think you said didn't personally trouble
17 you very much, what else happened that you can recall that
18 would have raised your level of dissatisfaction to such
19 that you would have registered the name
20 **first-racing-sucks.com?**

21 A. I suppose the McArthur lawsuit had something to do
22 with it.

23 Q. And when you say "the McArthur lawsuit," what do
24 you mean by that?

25 A. The lawsuit that you filed against Tim McArthur.

1 Q. Okay.

2 A. You know very well what I'm talking about.

3 Q. Well, I know --

4 A. Okay.

5 Q. -- but the purpose is for the record for the
6 Court.

7 A. My apologies.

8 Q. And what did you understand -- or what did -- what
9 about that lawsuit raised your level of unhappiness with
10 First Racing to the -- such that you would register
11 first-racing-sucks.com?

12 A. That the point, I didn't care for the way the Sim
13 Racing community was being treated by First Racing, so I
14 registered the domain name.

15 Q. Okay. And when you say "being treated," what is
16 it that First Racing was doing to the Sim Racing community
17 that you didn't care for?

18 A. They were in the process of stopping people from
19 creating modifications to the NASCAR 2003 game, which had
20 gone on for almost two years -- maybe not quite two years,
21 but somewhere in that kind of neighborhood. That's pretty
22 much it.

23 Q. Are you familiar with the actions that
24 Mr. McArthur was sued for by First Racing? Do you know
25 what he did that caused them to file a lawsuit?

1 A. Only in generalities.

2 Q. Well, do you know -- do you know that the lawsuit
3 alleged that he violated First Racing's copyrights?

4 A. Yes.

5 Q. Do you know whether he did or he didn't?

6 A. I have no idea.

7 Q. Okay. If he did, would that still have annoyed
8 you that First Racing sued him?

9 MR. RYAN: Objection.

10 Q. (BY MR. SCHWARTZ) Do you understand the question?

11 A. No. Rephrase it.

12 Q. If, in fact, the allegations were true that
13 Mr. McArthur violated First Racing's copyrights --

14 MR. RYAN: Objection.

15 MR. SCHWARTZ: Well, I haven't finished my
16 question, Joe. I'm asking the witness to assume something.

17 Q. (BY MR. SCHWARTZ) If, in fact, the allegations in
18 the complaint against Tim McArthur were true and that he
19 did violate First Racing's copyrights by the application he
20 was distributing, would it still annoy you that First
21 Racing sued him?

22 MR. RYAN: Objection.

23 A. I'm still not sure I understand your question.

24 Q. (BY MR. SCHWARTZ) Well, I think one of the
25 answers you gave as to your level of dissatisfaction with

1 Q. It didn't mention your name, did it?

2 A. Not that I recall.

3 Q. Did it mention anybody's name in particular --
4 other than Dave Kaemmer's?

5 A. I think in that particular posting, there was some
6 mention of RedLine Developments, but I don't recall
7 specifically.

8 Q. Okay. Never accused you of being a hacker and a
9 thief?

10 A. Not directly.

11 Q. Did it accuse you indirectly of being a hacker and
12 a thief?

13 A. Sure.

14 Q. How?

15 A. He says in his e-mail to me, We will not tolerate
16 the violation of our intellectual property rights,
17 including the hacking of our executables, distribution of
18 hacked executables, creating tools intended to hack our
19 executables or distribution of such tools.

20 So if he is sending this to me, then my
21 interpretation of it is he thinks I am hacking or
22 distributing hacked executables, creating tools intending
23 to hack our executables or whatnot. So yes, indirectly, he
24 is calling me a hacker, in my opinion.

25 Q. Do any of the series that you belong to, that you

1 identified earlier today, run NASCAR 2003 software with
2 modified executables?

3 A. Yes.

4 Q. So is it the word "hack" that rankles you?

5 A. To a large extent, yes.

6 Q. If it had said modified executables, it wouldn't
7 have bothered you?

8 A. I don't know.

9 Q. Okay. While we're on it, which of the -- which of
10 the series that you gave me before runs NASCAR 2003 with
11 modified executables? Do you want me to go through the
12 list for you?

13 A. The GTP mod.

14 Q. That's the TPTCC Series?

15 A. The GTP, the one I mentioned to you a few minutes
16 ago.

17 Q. Okay.

18 A. I don't know about the rest of them. I -- I can
19 only assume that they have -- I can't even assume. I don't
20 know.

21 Q. Okay. What about the Open Wheel Racing Series, is
22 there a modified NASCAR 2003 executable that runs for these
23 series that are --

24 A. For the series that I gave you, no.

25 Q. Is there another one that does?

1 A. There was.

2 Q. Okay. What one was that?

3 A. That's the one you talked about --

4 Q. Oh, this `owr2k5_v1.0.0.1.zip` file?

5 A. This particular one in Exhibit 3 is not a modified
6 executable, no.

7 Q. Okay.

8 A. But there is a file name -- or was a file name by
9 that same name --

10 Q. Yeah.

11 A. -- that was, in fact, a modified executable.

12 Q. Okay. Let's identify that.

13 MR. SCHWARTZ: Let's mark this as Exhibit 4.

14 (Exhibit No. 4 was marked.)

15 MR. SCHWARTZ: Joe, I'm placing in front of
16 the witness a screenshot that indicates torn8oalley.com at
17 the top, and in the middle of it, there's a file download
18 box -- oh, sorry.

19 Q. (BY MR. SCHWARTZ) Do you have the one that
20 says -- the nodc file?

21 A. Uh-huh.

22 Q. Okay. So let me find another one. We'll save
23 that as Exhibit 4.

24 MR. SCHWARTZ: Exhibit 5.

25 (Exhibit No. 5 was marked.)

1 MR. SCHWARTZ: We've marked as Exhibit 5 a
2 screenshot that's ow-racing.com and shows a file download
3 box with owr2k5_v1.0.0.1.zip as Exhibit 5.

4 Q. (BY MR. SCHWARTZ) Does that reflect the file that
5 you're talking about that did have the modified executable?

6 A. As far as I know, yes.

7 Q. Okay. What about the TPTCC Series, did that ever
8 run a version or races using a version of NASCAR 2003 that
9 had a modified executable?

10 A. Not to my knowledge, no.

11 Q. Any other simulation racing series that you're
12 aware of that ran a modified executable of NASCAR 2003?

13 A. The Sprint car mod.

14 Q. Okay. And was that -- that was run through the
15 OWSC Series; is that right?

16 A. Say again, I'm sorry?

17 Q. The Sprint car mod that you just identified, was
18 that run through the OWSC Series?

19 A. Yes.

20 Q. Now, did Torn8oAlley host Sprint car mod races
21 using that executable?

22 A. Yes.

23 Q. And did Torn8oAlley host open wheel races using a
24 modified NASCAR 2003 executable?

25 A. Say again.

1 Q. Did torn8oalley.com host open wheel races using a
2 modified NASCAR 2003 executable?

3 A. No.

4 Q. I think you did testify at one time that Open
5 Wheel Series had a -- or ran races using a modified NASCAR
6 2003?

7 A. I did not say that.

8 Q. You didn't. Okay. So the ones that you know of
9 that ran races that used a modified NASCAR 2003 executable
10 were the OWSC Series?

11 A. Yes.

12 Q. And the GTP Series?

13 A. Yes.

14 Q. And is that it or was there another one?

15 A. Those were the only two that I'm aware of that
16 were run at Torn8oAlley.

17 Q. Okay. Are you aware of other series outside of
18 Torn8oAlley that ran versions of NASCAR 2003 with modified
19 executable?

20 A. I'm sure they exist, but I'm not aware -- I don't
21 have firsthand knowledge of them.

22 Q. You've never participated in any outside --

23 A. No.

24 Q. Now, taking a look at Exhibit 5, I think you
25 testified earlier that this particular file, to your

1 A. We updated artwork and we modified the executable
2 rather than change trackINI files to add more grip or
3 anything like that. We simply modified the executable --

4 Q. Okay.

5 A. -- to achieve the mechanical -- the physics affect
6 that we were looking for that would best simulate an open
7 wheel race car.

8 Q. Okay. Now, you used the term "we" throughout.

9 Who in addition to you was involved in that?

10 A. I think they're the same couple of people that
11 are -- that I specified in --

12 Q. You're going to your interrogatory responses -- is
13 that --

14 A. Yes.

15 Q. Hold on and let me get a copy of those out and we
16 can just mark those.

17 (Exhibit No. 6 was marked.)

18 Q. (BY MR. SCHWARTZ) So where are you looking in
19 your interrogatory responses that we've marked as
20 Exhibit 6?

21 A. They're simply in the answer to Interrogatory
22 No. 7, the final paragraph.

23 O. Okay.

24 A. There's two names there, one is MaxTone and the
25 other is JoeB.

1 Q. Okay.

2 A. They were the other two that participated with me.

3 Q. What's MaxTone's real name?

4 A. Rob something -- Rob Peterson.

5 Q. And where does Rob Peterson reside?

6 A. In Arlington.

7 Q. Arlington, Virginia?

8 A. Arlington, Texas.

9 Q. Texas. Okay. And what about JoeB, who is that?

10 A. That's Joe. That's all I know him by.

11 Q. You don't know his last name?

12 A. Starts with a "B."

13 Q. Okay.

14 A. I mean, I don't -- I honestly don't know -- I knew
15 it at one point, but I don't recall what it is.

16 Q. How about Joe Barlow?

17 A. That could be it.

18 Q. Where does Mr. Barlow reside, to your knowledge?

19 A. Either somewhere in Pennsylvania or Maryland, I
20 think.

21 Q. Okay. Anybody else assist you in making these
22 modifications that were part of the Open Wheel Racing 2005
23 product?

24 A. No.

25 Q. Now, I think you said earlier that it was a

1 mistake that this was available for public download; is
2 that right?

3 A. That's correct.

4 Q. Okay. Can you explain why it was a mistake,
5 please?

6 A. It was planned to be released roughly around the
7 time that I first got an e-mail from Steve Myers. We -- I
8 think I was actually a month or so away from releasing the
9 product at that time, and the file was left on the website
10 for some reason. I don't recall exactly why, but it was
11 left up there and somehow or another, either -- I actually
12 don't know how, but it got placed into the front page of
13 OW-Racing as a link by mistake. How that happened, I don't
14 quite understand, but it did.

15 Q. Okay.

16 A. And it had -- the best I can determine it happened
17 sometime end of July, first part of August of this year --

18 Q. Okay.

19 A. -- because I wasn't here.

20 Q. Where were you?

21 A. I was on vacation.

22 Q. Okay. Does anyone other than you have the ability
23 to modify the ow-racing.com site such as placing links on
24 it?

25 A. Currently?

1 Q. At the time?

2 A. I don't know. I don't -- there wasn't suppose to
3 be anybody else, but...

4 Q. Is that -- the ability to place links or modify a
5 page, is protected by some sort of access device, isn't
6 it -- or some sort of access code?

7 A. Well, you have to log into the site and you have
8 to have access given by me to be able to perform that
9 function, yes.

10 Q. Right. That's exactly what I was asking. So
11 wouldn't -- would you have record of who you gave such
12 access to?

13 A. No. I mean, I don't have any recollection or any
14 e-mails or anything else suggesting that I gave access to
15 anyone.

16 Q. Okay. Well, when you -- help me understand the
17 process. If you wanted to give access to someone, how do
18 you do that?

19 A. Through an administrative panel on the website.

20 Q. Right. And that -- that administrative panel
21 is -- and the website is maintained by VIRTBIZ; is that
22 right?

23 A. No. The website is maintained by me.

24 Q. Okay.

25 A. The website is hosted by VIRTBIZ.

1 Q. So --

2 A. VIRTBIZ does nothing as it relates to this
3 website.

4 Q. What -- are there -- is there any record within
5 your server for VIRTBIZ that would reflect any changes in
6 access rights?

7 A. Not to my knowledge.

8 Q. The computer where this website is actually run,
9 the server, that's the one that's at USA Mobility, correct?

10 A. No.

11 Q. Okay.

12 A. This website is hosted at VIRTBIZ.

13 Q. All right.

14 A. That server is located in a VIRTBIZ facility.

15 Q. Okay.

16 A. That website is therefore located in a VIRTBIZ
17 facility wherever that -- wherever their facilities are.

18 Q. Okay. So the Torn8oAlley one is the one that's
19 residing on the computer?

20 A. Torn8oalley.com, the website, is also hosted by
21 VIRTBIZ on one of their servers.

22 Q. What is --

23 A. The dedicated race server is hosted at USA
24 Mobility.

25 Q. Okay. And that's all that's used for?

1 difference is between those two?

2 A. We've already been over that.

3 Q. Well, okay. I don't know that I -- I certainly
4 know I did not ask you to compare them side by side. I do
5 know that you testified to some degree about what was in
6 Exhibit 3 earlier.

7 A. Exhibit 3 contains the -- contains a set of PWF
8 released sounds and whatnot associated with the PWF
9 Trans-Am mod that was done whenever it was done, and that's
10 what Exhibit 3 contains. Exhibit -- which one did you say?

11 Q. 5

12 A. 5?

13 Q. Yeah, I'm asking you --

14 A. Contains --

15 Q. -- because they have the same file name, right?

16 A. Yes, they do.

17 Q. Okay. Go ahead.

18 A. Exhibit 5 contains a self-installing executable to
19 install the owr2k5 files for use with NR2003.

20 Q. And how are you -- how do you know this difference
21 based on just the screenshots?

22 A. Because I created them.

23 Q. Okay. So is it your testimony that the zip file
24 that was on First-Racing-Sucks, you created to be different
25 than the zip file that was on ow-racing.com?

1 A. Yes.

2 Q. And why did you -- well, why did you create
3 different ones under the same name?

4 A. To see what reaction I would get from First
5 Racing.

6 Q. Okay.

7 A. Knowing that they were out there just looking for
8 this kind of information.

9 Q. And what reaction did you get from First Racing?

10 A. Nothing initially, not until I was served with the
11 lawsuit stuff in August -- or whenever it was.

12 Q. So in time line, which did you create first, the
13 file that was in Exhibit 3 or the file that's reflected on
14 Exhibit 5?

15 A. I don't recall specifically, but I would guess
16 that Exhibit 5 was created before Exhibit 3.

17 Q. Now, was this owr 2005 -- we're talking about the
18 one with the modified executable in it now -- was that ever
19 distributed on torn8oalley.com?

20 A. No.

21 Q. Let's take a look now at Exhibit 4. It is the one
22 that shows the download box and the file name being
23 owsc_nocd_temp.zip. Is that a file that was being made
24 available on torn8oalley.com?

25 A. Again, it was made available, but made available

1 by mistake.

2 Q. Okay. And so the answer to my question is yes, it
3 was available on torn8alley.com?

4 A. Describe what you mean by "made available."

5 Q. Somebody could download that file off of --

6 A. No, they could not.

7 Q. Okay. Well --

8 A. If you mean -- go ahead, explain what you mean.

9 Q. Well, from this screenshot, it appears that the
10 user -- and I can say on the record that -- well, I don't
11 know for sure. Somebody from First Racing -- or iRacing at
12 the time -- captured this screenshot, and we're using it
13 for the purposes of just the questions we've got on your
14 administration of torn8alley.com. But if somebody was on
15 torn8alley.com, wanted to download owsc_noCD_temp.zip at
16 around July of 2005, could they do it?

17 A. No.

18 Q. Was there a time when they could if it wasn't July
19 of 2005?

20 A. No.

21 Q. Now, you did say a few minutes ago that it was by
22 mistake on that website; is that right?

23 A. I think what I said was the link to that file --

24 Q. Okay. I've got it. Was on the website; is that
25 right?

1 A. The link to this file was not on torn8oalley.com.

2 Q. Okay.

3 A. The link to this file was on ow-racing.com.

4 Q. Okay.

5 A. In the same context as I described the owr2k
6 file --

7 Q. Right.

8 A. -- as being a mistake, this one was contained in
9 the same set of links.

10 Q. Okay. Now, the links -- what were they links to?

11 I mean, what -- what computer was hosting these file if
12 they weren't on -- or were they on the VIRTBIZ servers?

13 A. Yes, they were on the VIRTBIZ servers.

14 Q. Okay. So do you have any explanation as to why --
15 as to why a user could apparently download this file from
16 torn8oalley.com?

17 MR. RYAN: Objection.

18 A. I don't understand what --

19 Q. (BY MR. SCHWARTZ) From the screenshot, it appears
20 that somebody is downloading owsc_nocd_temp.zip from
21 www.torn8oalley.com?

22 A. Correct.

23 Q. And I think I just heard you say it wasn't
24 available on torn8oalley.com?

25 A. That's correct.

1 Q. It was only made available on --

2 A. The link -- somebody copied this link from
3 OW-Racing into that website, and that's how they got access
4 to that file. You asked, Was this file made available on
5 torn8oalley.com --

6 Q. I get it.

7 A. -- for a user to download? I said no. And it's
8 not and it wasn't.

9 Q. So when you say "somebody copied this link" --

10 A. That's correct.

11 Q. -- you're talking about --

12 A. The link that was available on OW-Racing.

13 Q. So -- okay. And just see if you can let me finish
14 my question.

15 What you're saying is that somebody other
16 than you posted a link somewhere on torn8oalley.com that
17 allowed someone to go back to the OW-Racing page and pick
18 up this file; is that right?

19 A. No.

20 Q. All right.

21 MR. SCHWARTZ: Can I have his answer previous
22 to the no answer?

23 (Requested Portion was Read.)

24 Q. (BY MR. SCHWARTZ) What do you mean by somebody
25 copied this link into that website?

1 A. Whoever created this screenshot, whether it was
2 you, iRacing, First, whoever created this particular
3 Exhibit 4 --

4 Q. Yeah.

5 A. -- copied this link that's in the address field --

6 Q. Right.

7 A. -- from OW-Racing into another browser window, or
8 perhaps the same browser window, to get this box to show up
9 that says they're downloading owsc_nocd_temp.zip.

10 Q. Okay.

11 A. So whoever created this particular screenshot,
12 copied that link from OW-Racing either into another browser
13 window or perhaps the same browser window.

14 Q. Okay. And so where it shows under the address,
15 fileswap/owsc, is it your testimony that that was created
16 by the user to make it appear that the download was coming
17 through Torn8oAlley as opposed to some functionality that
18 was already on Torn8oAlley?

19 A. I don't understand your question.

20 Q. Well, as I understood your answer, you seem to be
21 saying that the user who created this screenshot --

22 A. Uh-huh.

23 Q. -- effectively manipulated the use of the browser
24 so that it would appear that this download was coming from
25 Torn8oAlley even though it was truly coming from the

1 ow-racing.com?

2 A. That's not what I said.

3 Q. Okay. I misunderstood what you said.

4 A. What I said was, who created this document --

5 Q. Exhibit 4.

6 A. -- Exhibit 4, copied this link, which was
7 available on OW-Racing.

8 Q. Okay. The www --

9 A. The www.torn8alley.com/fileswap/owsc/owsc_nocd_
10 temp.zip, that particular link, the entire thing was
11 mistakenly allowed to -- to exist on ow-racing.com.

12 Q. I get it -- I think I got it.

13 A. Now, they either copied that link or they typed it
14 in like this --

15 Q. Yeah.

16 A. -- on torn8alley.com to get this file to show up.

17 Q. Oh I see.

18 A. The file, owsc_nocd_temp.zip is named that based
19 on the e-mail that Steve Meyer sent to me on March 4th when
20 he asked for that particular link or sets of files to be
21 taken down. It was taken down by renaming the file.

22 Q. So if you took it down by renaming the file, it
23 was still available on the website as long as somebody had
24 the new file name; is that right?

25 A. No, because there where wasn't then a link to that

1 file.

2 Q. I'm sorry. I guess I'm confused and obviously you
3 know this stuff better than I do. What I'm trying to
4 understand is -- maybe -- or let me just repeat it and see
5 if I've got it right. On ow-racing.com, there was a link,
6 the address for which is what is in the address bar at
7 Exhibit 4; is that right?

8 A. That's correct.

9 Q. Okay. So that if somebody on ow-racing.com
10 clicked on that link, it would download the
11 owsc_nocd_temp.zip file?

12 A. That's correct.

13 Q. Okay. And what you're saying -- so that link, in
14 effect, directed the browser of the user to the Torn8oAlley
15 site to obtain the download; is that right?

16 A. Repeat the last part of your question.

17 Q. The link -- I'm just trying to understand the way
18 it worked at the time -- the link by which mistakenly
19 posted by which a person could download this
20 owsc_nocd_temp.zip file, when you clicked on that link on
21 your browser, which was open to ow-racing.com, it would
22 actually go to the torn8ocalley.com site to obtain the file
23 for the download?

24 A. Yes, loosely speaking. I mean, that's essentially
25 how links work.

1 Q. Okay. Because, in fact, the first --

2 A. But, as I said with Exhibit 4 --

3 Q. Right.

4 A. -- somebody physically had to either copy that
5 link and put it in that browser window or type it in.

6 Q. Okay.

7 A. If you just click on a link, it opens only this
8 box, not the website and this box. That's how I know that
9 whoever created this particular document either typed it in
10 or simply did a cut and paste from a link at OW-Racing as
11 they were browsing torn8oalley.com.

12 Q. So is it your testimony that nowhere on
13 torn8oalley.com was there a link by which somebody could
14 just directly download this file?

15 A. That is correct.

16 Q. Now, can you download a file -- a file from a
17 website even if there isn't a link?

18 A. Say that again.

19 Q. Can you download a file from a website even if
20 there isn't a link?

21 A. It's possible.

22 Q. I mean, someone -- to obtain this file that's on
23 Exhibit 4, as I think you just said, you could go to this
24 website, either type or paste in this address and it would
25 download this file from Torn8oAlley even if there wasn't

1 the link on the face of Torn8oAlley; is that right?

2 A. If somebody knew this particular address of that

3 link --

4 Q. Right.

5 A. -- then yes, they could go to torn8oalley.com type
6 that in, which is what's been done here --

7 Q. Yeah.

8 A. -- and get that --

9 Q. It could download --

10 A. -- particular file.

11 Q. Okay.

12 A. Your question previously, I believe, if I
13 understood it correctly, was: Was there a link to this
14 particular file available to the users? And the answer to
15 that was no.

16 Q. Okay. The -- assuming somebody was on
17 ow-racing.com and found this mistakenly posted link --

18 A. Uh-huh.

19 Q. Is it -- are you able to, from that link, derive
20 the address that's reflected in Exhibit 4?

21 A. Yes.

22 Q. Okay. So someone could have found it that way and
23 then gone to torn8oalley.com, placed the address at the top
24 and obtained the download, correct?

25 A. Yes.

1 Q. Okay. Now, when you say the links were mistakenly
2 posted, where -- were they on the initial splash page for
3 openwheelracing.com?

4 A. Say -- say that again.

5 Q. Where were the links -- you said -- I think you
6 said that both of these links, the one that's reflected by
7 the download in Exhibit 5 and the one's reflected in the
8 download in Exhibit 4, were -- I think you said mistakenly
9 posted on ow-racing.com, correct?

10 A. Yes.

11 Q. Were they on the introduction page?

12 A. Yes.

13 Q. Okay. Where were they on the introduction page?

14 A. They were links in the two pictures behind the
15 box.

16 Q. Okay.

17 A. That you can see.

18 Q. Okay. I think I have a picture of that.

19 MR. SCHWARTZ: Let's mark this as Exhibit 7
20 and this as Exhibit 8.

21 (Exhibit Nos. 7-8 were marked.)

22 MR. SCHWARTZ: And for Joe, what we're
23 looking at are screenshots of openwheelracing.com, the --
24 Exhibit 7 is one that shows the words "Bite Me FIR\$T" above
25 an icon to the left where it says, Open Wheel Racing. And

1 Exhibit 8 shows the words "Bite Me Twice FIR\$T" above an
2 icon reflecting Sprint car racing.

3 And Joe, we will provide all this stuff to
4 you. Obviously, I'll provide -- well, your client has the
5 originals in his possession that we're showing him. And
6 if -- presumably, you can get them from him, but if you
7 can't from him, we can get them to you as well.

8 Q. (BY MR. SCHWARTZ) So now looking at Exhibit 7,
9 Mr. Robinson, where it says, Open Wheel Racing, Bite Me
10 FIR\$T, on the left, is that where the link was to one of
11 these two files?

12 A. Yes. I mean it's close to this -- this is -- I
13 forget what they call this little Bite Me FIR\$T thing, but
14 there is a -- there's a --

15 Q. There's a rollover, wasn't it?

16 A. I don't know what it's called.

17 Q. Okay. But somebody on ow-racing.com programmed it
18 so that when you went to that open wheel racing icon, it --
19 that indicated over at Bite Me FIR\$T with a dollar sign
20 through the "S," correct?

21 A. Yes.

22 Q. And, in fact, if you clicked on that open wheel
23 racing icon, it would lead to a download of what?

24 A. If you clicked where?

25 Q. On that icon somewhere. I thought you said that

1 was the picture by which the mistaken link was attached; is
2 that wrong?

3 A. It's in a portion of that picture.

4 Q. Okay.

5 A. So if you just clicked on the upper left-hand
6 corner --

7 Q. Yeah.

8 A. -- of that particular image --

9 Q. Yeah.

10 A. -- you probably wouldn't get anything.

11 Q. Okay.

12 A. So there's a -- and I don't recall specifically
13 where in that particular image, but yes, there's somewhere
14 in that image where if you click, that that little pop-up
15 box there shows up.

16 Q. The Bite Me FIR\$T box?

17 A. That's correct.

18 Q. But what about the file download box, does that
19 show up after you click on that as well somewhere?

20 A. Well, that's what's in your Exhibit 3 or 4 or
21 whatever it is.

22 Q. Well, let's see if we can figure out which one it
23 is. Take a look at Exhibit 4, if you would. Can you tell
24 me where the link for owsc_nocd_temp.zip was on Exhibit 8?

25 A. In the general vicinity of where it says, Bite Me

1 Twice FIR\$T.

2 Q. Okay. And then if you look at owr2k5, which is
3 reflected on Exhibit 5 --

4 A. Yes.

5 Q. -- where was the link to that?

6 A. On Exhibit 8?

7 Q. On Exhibit 7.

8 A. Where it says, Bite Me FIR\$T --

9 Q. Okay.

10 A. -- or in that general vicinity.

11 Q. Okay. And it's your testimony that you don't know
12 who placed those links on ow-racing.com?

13 A. No, that's not my testimony.

14 Q. Okay.

15 A. My testimony is that I don't know who made them
16 active.

17 Q. Okay.

18 A. I placed the links there.

19 Q. Okay. And who coded it such that when you put
20 your cursor on -- if you look at Exhibit 7 -- on the open
21 wheel racing image, it came up and said, Bite Me FIR\$T?

22 A. I did.

23 Q. Okay. And did you also do the same thing for the
24 Sprint car racing, Exhibit 8, where it says, Bite Me Twice
25 FIR\$T, you did that?

1 A. Yes.

2 Q. But your testimony is that when you did that, you
3 do not know -- you did not know that there was also an
4 active link there for the download?

5 A. When I created it, there was not an active link.

6 Q. Okay.

7 A. It was created and left alone for months. And
8 then it became active -- the best I can determine --
9 sometime towards the end of July.

10 Q. Okay.

11 MR. SCHWARTZ: We've been going for another
12 hour and a half. Do you want to take another break?

13 THE WITNESS: That's fine.

14 MR. SCHWARTZ: Okay. Let's go off the record
15 for a few minutes.

16 (Break was taken from 11:33 a.m.

17 to 11:40 a.m.)

18 Q. (BY MR. SCHWARTZ) Back on the record. You
19 remember you're under oath, Mr. Robinson?

20 A. Yes.

21 Q. Other than the owr2k5 file -- let me ask this --
22 -- strike that.

23 The owsc_nocd_temp.zip file that's reflected
24 on Exhibit 4 --

25 A. Yes.

1 Q. -- what did that zip file contain?

2 A. Another file for use with NASCAR 2003 as it
3 relates to the owsc mod.

4 Q. Okay. Now, I -- I think you testified that the
5 owsc mod had a modified executable, but I'm not sure. Did
6 you testify to that?

7 A. Yes.

8 Q. Okay. Was that modified executable contained in
9 the download that's reflected on Exhibit 5?

10 A. No.

11 Q. I'm sorry. I mentioned the wrong exhibit. On
12 Exhibit 4 -- same question for Exhibit 4?

13 A. Can you ask it again?

14 Q. Sure. Was the modified executable that related to
15 the owsc file contained in the zip file that's reflected on
16 Exhibit 4?

17 A. No.

18 Q. Okay. So was there another file that was
19 available on either torn8oalley.com or ow-racing.com that
20 related to owsc that did contain the modified executable?

21 A. Yes.

22 Q. And what file -- what was the name of that file?

23 A. I don't recall the exact name. It's owsc
24 something --

25 Q. Okay.

1 A. -- but I don't specifically recall the name of it.

2 Q. Okay. And that's separate and distinct from this
3 owr 2000 -- 2k5 file that we've been discussing earlier?

4 A. Yes.

5 Q. Okay. What period of time was that owsc something
6 file available on -- well, strike that.

7 Was it available on both torn8calley.com and
8 ow-racing.com?

9 A. I believe so, yes.

10 Q. Okay. During what period of time was that
11 available?

12 A. From September 2004 until approximately March
13 15th, 2005.

14 Q. And were you one of the developers of that owsc
15 file that contained the modified executable?

16 A. No.

17 Q. Who was -- who did --

18 A. I have no idea. I just hosted the file.

19 Q. Okay. Someone provided the file to you?

20 A. Yes.

21 Q. Who provided it to you?

22 A. I don't -- I'm not sure. Actually, there was a
23 small file provided to me by Don something -- Don somebody
24 or other -- that basically modified the executable to
25 change the physics to be able to run a Sprint car, much

1 like, as I understand it -- although I'm not 100 percent
2 familiar with it, but as I understand it, that the whole
3 McArthur deal was sort of about.

4 Q. Okay.

5 A. He had a small file that modified something,
6 that's what we had for the Sprint cars.

7 Q. But you don't know who Don was -- you don't
8 remember --

9 A. Don -- I don't remember his last name.

10 Q. Was he a member of one of the series that you
11 hosted?

12 A. No.

13 Q. Are you familiar with a -- sort of a loosely
14 organized group online known as the U.S. Pits?

15 A. Yes.

16 Q. Was Don part of U.S. Pits?

17 A. I have no idea.

18 Q. So Don provided -- I think you said a small file
19 that that file itself then modified the executable --

20 A. Yes, sir.

21 Q. -- for the NASCAR 2003?

22 A. Yes.

23 Q. And the download that was the osc mod, did it
24 include that application or something else?

25 A. Say that again.

1 Q. The download that you said, the osc download that
2 you couldn't remember the name of that was available from
3 September 2004 through March 2005, did that include that
4 application that modified the executable?

5 A. No.

6 Q. So the executable that Don provided, which
7 operated the change the NASCAR 2003 executable --

8 A. Yes.

9 Q. -- somebody ran Don's file to change the NASCAR
10 2003 executable?

11 A. Yes.

12 Q. Who did that -- who ran that?

13 A. I ran it, for one.

14 Q. Okay. And so -- and it changed the NASCAR 2003
15 executable in some way?

16 A. Yes.

17 Q. How did it change it?

18 A. It made -- it made some changes to the -- I
19 presume some values inside the executable to allow us to
20 run Sprint cars.

21 Q. You say you presume that's what it did?

22 A. Well, that's the effect.

23 Q. Okay. But -- so you only presume it because --

24 A. I don't know specifically what it modified.

25 Q. Okay.

1 A. All I know was the end effect, and that was to
2 drive a Sprint car.

3 Q. Okay. Did it change the appearance of the cars in
4 the game or just the physics of the cars?

5 A. Just the physics associated with Sprint cars.

6 Q. Okay. So if you only ran this executable you got
7 from Don on the NASCAR 2003 retail version, you would get
8 the same stock car images, but performing like Sprint cars;
9 is that the effect?

10 A. If that's all you did?

11 Q. Yeah.

12 A. Yes.

13 Q. Okay. And you testified you, for one, ran it?

14 A. Yes.

15 Q. And presumably, once you ran it, it created a new
16 modified executable from the NASCAR 2003 executable,
17 correct?

18 A. Yes.

19 Q. And then did you save that modified one as
20 something else when you ran it?

21 A. I didn't save it. It saved it as some
22 predetermined file name.

23 Q. Okay.

24 A. Whatever it was, I don't recall the name of it
25 actually.

1 Q. Okay. And then in terms of what was available to
2 that owsc file download that you testified to earlier, was
3 that a predetermined file that was obtained by running
4 Don's application part of that owsc download?

5 A. Say that again.

6 Q. Well, you just testified that when you ran Don's
7 application, it created a modified executable for NASCAR
8 2003.

9 A. Correct.

10 Q. Okay. And I'm trying to understand what was in
11 the file that was being made available for download through
12 Torn8oAlley and OW-Racing that was that owsc file you
13 couldn't remember the full name.

14 A. What was in that file?

15 Q. Yeah, what was in that -- it was a zip file; is
16 that right?

17 A. Most likely.

18 Q. Okay. So what were the files that were contained
19 in that zip file?

20 A. It was a self-installing executable --

21 Q. Okay.

22 A. -- just like the other ones.

23 Q. Just like the --

24 A. Just like owr2k5.

25 Q. Okay.

1 A. It's a self-installing executable that has Sprint
2 car models, paint jobs, some other minor artwork changes --
3 I don't recall exactly how many, but a few -- and
4 basically, whatever was necessary to run the Sprint car
5 mod.

6 Q. Uh-huh.

7 A. That's what it's about.

8 Q. And when you operated, you unzipped that owsc file
9 and you -- it created an icon on the desktop just like the
10 other one that you testified to, the owr2k5 file?

11 A. As I recall, yes, it does create an icon on the
12 desktop.

13 Q. Okay. And when you double-clicked on that icon,
14 what would happen?

15 A. You'd be racing Sprint cars.

16 Q. So it would operate with the NASCAR 2003 that the
17 user already owned --

18 A. Correct.

19 Q. -- to give them a different image that they're
20 racing with different physics --

21 A. Correct.

22 Q. -- but different from the retail version?

23 A. Yes.

24 Q. Would that Don be Don Mullins?

25 A. I don't --

1 Q. You don't know?

2 A. I don't know.

3 Q. Okay.

4 A. I mean, obviously, people are feeding you
5 information. I don't have the slightest idea what the
6 guy's name is, Don something or other.

7 Q. Just like your attorney is not sitting next to
8 you; my client is not sitting next to me. So that's how I
9 get the --

10 A. That doesn't sound like the right name, but I
11 honestly don't know. I'd have to go dig through the member
12 list at OW-Racing --

13 Q. Okay.

14 A. -- to see if he was even still on there.

15 Q. He was a member at one time?

16 A. At one time, at least in September of 2004.

17 Q. Okay.

18 A. If he is today, I have no clue.

19 Q. That member list, is that archived somewhere?

20 A. No.

21 Q. Okay. So when you say "dig through the member
22 list," you're talking about --

23 A. It's available online.

24 Q. You're talking about presently registered members?

25 A. Yes.

1 Q. You don't have an archived list of the older
2 members?

3 A. No.

4 Q. How did you get this file? Did it come to you by
5 e-mail, this thing that Don sent you?

6 A. Well, it was either e-mail --

7 Q. Uh-huh.

8 A. -- or it was via a instant messenger client or
9 perhaps a link somewhere else on the Internet. I honestly
10 don't remember what mechanism I got the file.

11 Q. But you tested it in some way to figure out what
12 it did, right, presumably?

13 A. No. I just followed the instructions that came
14 with it --

15 Q. Okay.

16 A. -- which said, Put it in this folder and
17 double-click on it. That's it.

18 Q. And you did that without knowing who sent it -- it
19 could have been infected or something like that with a
20 virus and you didn't care?

21 A. No. I knew who was sending it to me.

22 Q. Okay. Could it be Don Wilshe?

23 A. Could be.

24 Q. Okay.

25 A. That sounds closer to it than Mullins.

1 Q. Okay. W-I-L-S-H-E, Wilshe?

2 A. I don't know how you pronounce his name, but I
3 think that's who it is, yes.

4 Q. Okay. Now, once you followed the instructions and
5 you saw what it did, did you actually make the file
6 available on torn8oalley.com or did somebody else do it?

7 A. Say that again.

8 Q. You got this file from Don --

9 A. Correct.

10 Q. -- whoever it was. And you tried it out, you said
11 you followed the instructions.

12 A. Correct.

13 Q. You saw what it did, right, created a Sprint car
14 version?

15 A. Yes.

16 Q. And then sometime between then -- or sometime
17 around then, you said it was then available for download --
18 something was available for download on torn8oalley.com?

19 A. The entire Sprint car mod package --

20 Q. Okay.

21 A. -- became available in September of 2004.

22 Q. Okay. But what Don sent you wasn't the entire
23 package, right?

24 A. No.

25 Q. Just the little application?

1 A. That's correct.

2 Q. So who assembled the whole package?

3 A. I did.

4 Q. Anybody else?

5 A. No.

6 Q. Okay. And you used Don's application to create a
7 modified --

8 A. I took -- I took the created file from using his
9 little application and included that file as part of the
10 mod package.

11 Q. Okay. But -- okay. And then that was included
12 with the paint and the other --

13 A. Yes.

14 Q. -- things that went with the Sprint car look?

15 A. That's correct.

16 Q. Okay. Did you have any -- strike that.

17 How were you able to determine that the
18 revised or the modified executable operated like a Sprint
19 car rather than a NASCAR car?

20 A. How was I able to determine that?

21 Q. Yeah.

22 A. By starting up the game and looking at it.

23 Q. So you could, by your own experience in perceiving
24 the way the game operated, be able to assure yourself this
25 is operating like a Sprint car -- separate and apart from

1 NASCAR 2003?

2 A. I received a small application from him by which I
3 double-clicked on, and it did something to the NR2003
4 retail executable.

5 Q. Uh-huh.

6 A. What it modified, the values it used or anything
7 else, I have no idea. All I know is the end result was a
8 Sprint car executable that acted and behaved like a Sprint
9 car would or should or could. That's it.

10 Q. Now, did you have a Sprint car modification prior
11 to what you received from Don? Was there already something
12 that you were offering or that your series --

13 A. No.

14 Q. Okay. So this was basically a new series that was
15 as a result of Don's application?

16 A. Yes.

17 Q. Did you communicate with Don? Did you send an
18 e-mail back to him or anything as a result of him sending
19 you this?

20 A. Not that I recall.

21 Q. Did he communicate with you in any way?

22 A. Through the discussion forums on OW-Racing, that's
23 it.

24 Q. Okay. So the discussion forums are like a
25 bulletin board where somebody posts something and somebody

1 responds to that?

2 A. Yes.

3 Q. How long between the time that you got this little
4 application from Don to the time that you made available
5 the Sprint car package for download?

6 A. 60 to 90 days, I'm guessing. I don't recall.

7 Q. And you were the only one working on the other
8 aspects of the paint and the tracks?

9 A. No.

10 Q. So who else worked on the --

11 A. The same people that I've already given you their
12 names --

13 Q. Okay.

14 A. -- JoeB and MaxTone.

15 Q. Joe Barlow and Rob Peterson?

16 A. Yes.

17 Q. Okay. But as far as you know, they didn't have
18 anything to do with the creation of the application that
19 Don sent to you?

20 A. To the best of my knowledge, no. I don't know for
21 sure.

22 Q. Now, the owsc_nocd_temp.zip file that's on
23 Exhibit 4 -- I think you testified that that wasn't this
24 package of files that were being offered for Sprint car
25 racing, correct?

1 A. That's correct.

2 Q. What was in that file?

3 A. Only the modified executable that allowed you to
4 operate a Sprint car mod without a CD in your computer.

5 Q. And where did you get that -- or did you write
6 that?

7 A. I created it.

8 Q. You wrote it yourself?

9 A. Well, that's a stretch, but I created it.

10 Q. Okay. What is -- what is the difference between
11 creating it and writing it, in your answer?

12 A. Well, I didn't write the executable.

13 Q. Okay.

14 A. I don't have the software, the source code or
15 anything associated with the executable to do that.

16 Q. Okay.

17 A. I had access to a previous no CD patch of some
18 sort and simply compared files.

19 Q. What two files did you compare?

20 A. I compared a no CD file versus a regular file.

21 Q. Okay. And the regular file was a regular NASCAR

22 2003 --

23 A. Executable.

24 Q. -- executable file?

25 A. Yes.

1 Q. And when you compared those two, what did you
2 find? What was the result?

3 A. When I compared what?

4 Q. When you compared the no CD file that you just
5 testified to with the regular NASCAR 2003 executable, what
6 did the comparison yield?

7 A. Some slight differences in the file.

8 Q. Okay. And you used those slight differences to
9 create this nocd --

10 A. Yes.

11 Q. -- temp.zip?

12 And how did this file that was contained in
13 the nocd_temp.zip operate? In other words, once somebody
14 downloaded this, then what happened?

15 A. Well, I don't know what they did when they
16 downloaded it. I know how it was supposed to work.

17 Q. Well, how was it supposed to work?

18 A. You simply put this in the base folder of your
19 game, and it allows you to start up the game without your
20 master CD in the -- in the CD ROM drive or whatever you're
21 using.

22 Q. So would it also allow you to play the game
23 without the CD ROM -- with the disk in the CD ROM -- with a
24 disk in the CD ROM drive?

25 A. Say that again.

1 Q. Would it -- once you have this no CD file in your
2 master file for NASCAR 2003, that then allows the user to
3 play NASCAR 2003 from the hard drive of the computer
4 without a NASCAR 2003 retail disk in the drive, correct?

5 A. As long as they have a valid copy of the game to
6 begin with, then yes, they can play the game without having
7 a CD loaded in their PC.

8 Q. How do you -- why do you know -- strike that.

9 Why is it that this no CD file requires that
10 they have a valid copy of the game to begin with?

11 A. Why does it require that?

12 Q. Right. Why meaning functionality.

13 A. Because it checks to see if there's -- it checks
14 to see if there's some valid files associated with the
15 games.

16 Q. Okay.

17 A. Which files, I have no clue. But my understanding
18 of how it works -- and I frankly don't use that, so I don't
19 know specifically -- is that you have to have a valid
20 version of the game. So in other words, there's some file
21 associated with -- that's either loaded on your PC
22 somewhere that says I have a valid version of the game, and
23 then this allows you to play it. If you don't have that,
24 then you can't play it.

25 Q. Well, is it possible, in your understanding, that

1 A. There's only a few out there, so either Yahoo! or
2 MSN.

3 Q. Well, what, do you know?

4 A. Well, I use them all.

5 Q. Right.

6 A. I'm pretty sure the majority was on MSN.

7 Q. Okay. And you've got those clients loaded on your
8 PC at home so that you can communicate from there?

9 A. Yes.

10 Q. And is that where you were doing the
11 communication?

12 A. Some of it.

13 Q. Were you also doing some from your PC at work?

14 A. No.

15 Q. Any other -- well, where else were you using
16 those --

17 A. If I was traveling.

18 Q. You'd use what, a laptop?

19 A. Right.

20 Q. Have you searched your laptop or your PC at home
21 to see whether any of those communications are maintained?

22 A. They are not.

23 Q. So that means you did search and you know they're
24 not there or you --

25 A. I know how the client is set up.

1 Q. Did you copy or save any of the communications
2 that you received from Mr. Peterson or Mr. Barlow relating
3 to the development?

4 A. No.

5 Q. Did you divide amongst yourself responsibility in
6 terms of the development of the owr2k5 file?

7 A. Did we divide -- say that again.

8 Q. The responsibility -- in other words, did some of
9 you or one or more of you have responsibility for painting
10 the cars and another one or you or more of you have
11 responsibility for installing the tracks? I mean, you know
12 better than I do all the things that go into putting
13 together one of these packages.

14 A. Yes.

15 Q. Okay. So you split it among yourselves as to who
16 was going to do what?

17 A. Yes.

18 Q. Okay. What responsibility did you have?

19 A. Website administration, creating the README files
20 associated with the mods, creating executables, uploading
21 the files, making them available for upload. That was
22 probably about it.

23 Q. Okay. And when you say "creating the
24 executables," what does that mean?

25 A. Exactly what it says.

1 Q. So the executable that was the modified version of
2 NASCAR 2003, retailed executable, you created that?

3 A. Yes.

4 Q. What did Joe do as part of the project?

5 A. Some artwork.

6 Q. Okay. Anything else?

7 A. Did some 3-D work, helped with researching the
8 specifications as it were for an open wheel style car.

9 That's pretty much it.

10 Q. And what did Rob Peterson do?

11 A. Primarily, 3-D modeling.

12 Q. So would you say that you did the bulk of the work
13 on this?

14 A. No. It's incredibly more difficult to do 3-D
15 modeling than it is to do some other stuff.

16 Q. Now, when someone -- when someone downloads the
17 owr2k5 package that was available through ow-racing.com and
18 operates the executable that you created, does that
19 executable then create a copy of the NASCAR 2003 game into
20 random access memory?

21 A. Say that again.

22 Q. Well, I'll ask it a different way.

23 When you run the executable that you created,
24 what does that do?

25 A. Starts up the game.

1 Q. Right. And when it starts up the game, when the
2 game starts up, what happens?

3 A. In what respect?

4 Q. Well, you've got -- before you run the executable,
5 you've got the code for NASCAR 2003 sitting on a hard drive
6 that's already been installed, correct?

7 A. Correct.

8 Q. And when you operate an executable, what
9 happens to that code that's sitting on the hard drive?

10 A. Do you want Computer 101?

11 Q. Yeah.

12 A. That -- that piece of code then is -- gets loaded
13 into memory. The -- there's graphics processing and all
14 the other simulated things that happen with starting up the
15 game and the game starts up.

16 Q. Okay. So when it gets loaded into memory, it's
17 making a copy, isn't it, of the code --

18 A. I have no idea.

19 Q. Oh, you don't know how that works?

20 A. I've never looked at it.

21 Q. Okay. Does that mean you don't know how it works,
22 or you do know how it works?

23 A. It means I've never looked at that.

24 Q. Okay.

25 A. I can't tell you if it's a complete copy or not.

1 Q. I got it. I got it.

2 A. I don't know when this was made.

3 Q. Well, it's --

4 A. So when that screenshot was taken -- so assuming
5 that's the first part of August, let's say, it was 1,251
6 then. What it is today, I don't know. I'm guessing 1,300
7 maybe.

8 Q. Okay.

9 A. You're connected to the Internet. You can look
10 for yourself.

11 Q. Do you receive any compensation for your work with
12 ow-racing.com?

13 A. None.

14 Q. Or how about Torn8oAlley?

15 A. No.

16 Q. How much time, if you can estimate, did you spend
17 on working on the package that was owr2k5, including the
18 work you did on executables and other stuff?

19 A. I couldn't even begin to calculate it.

20 Q. 100 hours?

21 A. I couldn't begin to calculate it.

22 Q. Do you think it's more than 100 hours?

23 A. I don't know.

24 Q. Well, how long a period of time were you working
25 on that project in terms of months or years?

1 A. 60 days, perhaps.

2 Q. Okay. A couple months, you think.

3 The open wheel Sprint car, owsc mod package
4 that you previously testified to, did you -- I think you
5 already testified that you couldn't track how many people
6 downloaded it, correct? At least not now?

7 A. I could only track the number of attempts to
8 download it.

9 Q. Right. Did you hold races by -- in which people
10 used that modification to race against each other?

11 A. Are you referring to Torn8oAlley?

12 Q. Either -- through any service, did you hold -- in
13 which people used the modifications affected by the owsc
14 package to race against each other?

15 A. Yes.

16 Q. And was that through Torn8oAlley?

17 A. It was using Torn8oAlley's server, yes.

18 Q. Okay. How many such races did -- when I say
19 "you," I guess I mean you using the server at --

20 A. It was a handful of beta test races.

21 Q. Okay.

22 A. I mean, exact number, I don't know.

23 Q. How many -- do you have any records of the number
24 of people who participated in those beta test races?

25 A. No.

1 Q. And did those occur throughout the period of
2 September 2004 through March of 2005?

3 A. No.

4 Q. When did they occur?

5 A. Before September 2004.

6 Q. Okay. So you had a bunch of test races before it
7 was released?

8 A. Yes.

9 Q. After it was released, were there any races that
10 you know of where people used that mod to race against each
11 other?

12 A. I don't know.

13 Q. You never participated in one?

14 A. I participated in one at torn8alley.com.

15 Q. Okay. And when was that?

16 A. I don't recall. I'd have to go dig through some
17 standings to see.

18 Q. So that would be reflected somewhere?

19 A. Yes.

20 Q. Okay. Where would that be reflected?

21 A. On torn8alley.com.

22 Q. Okay. And your recollection is that open wheel
23 Sprint car mod was only used for one race on
24 torn8alley.com?

25 A. That's correct.

1 Q. How many people race in that race, to your
2 recollection?

3 A. I have no idea.

4 Q. Would that also available in the --

5 A. Possibly.

6 Q. Are you aware of any other races off of
7 torn8oalley.com that use that mod?

8 A. No.

9 Q. Did you do any beta races for the owr2k5 mod?

10 A. No.

11 Q. No one tested that against each other?

12 A. You asked if we conducted any races, and I said
13 no.

14 Q. Right. I'm asking you a broader question.

15 Did anyone race against each other, to your
16 knowledge, using that mod?

17 A. In a race?

18 Q. In any type of test.

19 A. Yes.

20 Q. And when was that?

21 A. January 2005.

22 Q. So that would have been six or seven months --
23 eight months even before it was available through these
24 mistakenly posted links?

25 A. That's correct.

1 Q. Okay. How many such -- can I call that a test
2 race; is that fair?

3 A. No. Call it a practice session.

4 Q. Okay. How many practice sessions --

5 A. I have no idea.

6 Q. Did you participate in them -- any?

7 A. Yes.

8 Q. And were they on the server that you maintained in
9 Plano?

10 A. Yes.

11 Q. And the ones that you participated in, how many
12 other racers, as best you can recall?

13 A. Two or three at any given time.

14 Q. Was there any scheduled periodic practice sessions
15 like that, like once a week or once a month or anything
16 like that?

17 A. No.

18 Q. Who would arrange for such a practice session?

19 How did anyone else know to show up other than you?

20 A. Well, the server was open to --

21 Q. Right.

22 A. -- the people that were beta testers as it were.

23 Q. And then they communicate among themselves as to
24 when they wanted to do a practice session?

25 A. Well, they knew that the server was open 24/7 --

1 Q. Right.

2 A. -- so they just connect to it and run whenever
3 they wanted to. I didn't have to be there to do anything.
4 It was running.

5 Q. What had to run on the server to allow members or
6 people with access --

7 A. Just the application. The owr2k5 application has
8 to be running just like any other application has to be
9 running.

10 Q. So that was loaded onto the server in Plano --

11 A. That's correct.

12 Q. -- and that allowed people around the country --
13 or around the world, for that matter -- to connect to that
14 server?

15 A. No.

16 Q. No?

17 A. You still had to know how and where to connect to.

18 Q. Well, you didn't let me finish my question. I was
19 going to say if they had the right IP address.

20 A. If they had the right IP address and they were a
21 member of the beta test team, then they had access to that
22 information.

23 Q. Right. And that information was -- when you say
24 "information," you're talking about the application,
25 correct?

1 A. That's correct.

2 Q. Well, why is it then that the download on
3 Exhibit 3 and the download on Exhibit 5, which have the
4 same file name, are exactly the same size?

5 A. That's the way I made it.

6 Q. So you filled it with stuff so that it would just
7 look to be the same size?

8 A. Yes.

9 Q. And then have you -- after this download was
10 taken, the 52.1 megabyte download, did you then change what
11 was available on first-racing-sucks.com as far as the
12 download with that name on it?

13 A. Not that I recall.

14 Q. Okay. Let's -- I took your advice and got on the
15 Internet. Let's take a look at first-racing-sucks.com,
16 which I hope I'll be able to accomplish here. While that's
17 heating up, let me ask you another question.

18 MR. SCHWARTZ: Joe, I've just turned on a
19 projector.

20 Q. (BY MR. SCHWARTZ) Don't you keep logs of the chat
21 rooms of torn8oalley.com?

22 A. Do I keep logs of what? Say it again.

23 Q. Do you keep chat logs for torn8oalley.com?

24 A. In what respect?

25 Q. Well, do you keep any archive of the bulletin

1 boards at torn8oalley.com?

2 A. No.

3 Q. Is there a chat feature for torn8oalley.com that's
4 not the bulletin boards?

5 A. I don't believe so.

6 Q. Okay. So -- and we'll go to it in a minute, but
7 where you say in torn8oalley.com that there's an archive
8 chat log to ensure that people aren't abusive, that's just
9 not true?

10 A. I don't believe I said that.

11 Q. Okay. All right. We've got up on the screen --
12 is this the -- is this your website,
13 first-racing-sucks.com?

14 A. Looks like it, yes.

15 Q. Okay. And it says, You know why you're here, so
16 go ahead and enter?

17 A. Uh-huh, yes.

18 Q. I'm just going to print this screen. And then
19 I'll go through -- clicking through to where it says, You
20 know why you're here, so go ahead and enter. And this is
21 the first page inside the splash screen; is that right?

22 A. Yes.

23 Q. Now, is there, on this website, a version of
24 owr2k5 available for download or a file with that name?

25 A. Is there a file available what?

1 Q. Is there a file available for a download on
2 first-racing-sucks.com known as owr2k5 as we speak today?

3 A. Available for download meaning what?

4 Q. Meaning that there's some sort of link on here
5 that you can click on and it shows that -- at least it
6 appears that you're supposed to be able to download this
7 file, owr2k5?

8 A. No.

9 Q. When was the last time that that file was
10 available?

11 A. There was never a link on this site that led to a
12 download.

13 Q. So when we looked at Exhibit 3, are you saying
14 that that wasn't a download available on this site?

15 A. No. You asked if there was a link to a download
16 to that file. I said no.

17 Q. I see. So the answer to my question is no,
18 because it's not a link; is that right?

19 A. You asked if there was a link on this site to that
20 file. The answer to that question is no.

21 Q. Right. Is this file available on the site in some
22 way or another?

23 A. That file exists within a folder in a directory on
24 that web server, yes.

25 Q. Okay. And how would one get to it from this page?

1 A. You wouldn't. It's not available.

2 Q. So if -- if you had the address for the folder on
3 this site, you could download it the same way that other
4 file was available on Torn8oAlley?

5 A. Yes.

6 Q. Okay. And what is the address for that file on
7 first-racing-sucks.com?

8 A. I'm not sure. I'd have to log in as an FTP
9 administrator and look.

10 Q. Okay. As far as you know, though, what's
11 available now is the same as what was available on
12 Exhibit 3, the same file?

13 A. Yes.

14 Q. Which doesn't include a modified executable?

15 A. That's correct.

16 Q. Okay. Now, let's go over to -- this is
17 ow-racing.com, right? This is your site?

18 A. Yes.

19 Q. And there's no links here anymore on the open
20 wheel racing?

21 A. To the best of my knowledge, yes, there's not.

22 Q. Or on the Sprint car racing?

23 A. Right.

24 Q. But we can tell from this the number of members;
25 is that right? Does that -- that shows the number of

1 members, 1,416?

2 A. Yes.

3 Q. Okay. And as far as you know, that's the number
4 of members today?

5 A. If that's active right now, then yes.

6 Q. Okay. What is the developers only chat link
7 there, which shows zero online. Who is that for?

8 A. That entire chat function was set up early on in
9 the creation of the site itself. It's never been used.

10 Q. Never been used at all?

11 A. It was used between me and one other person to
12 test its functionality, but that's it.

13 Q. Is there a similar function on Torn8oAlley?

14 A. No.

15 Q. What is the purpose of first-racing-sucks.com?

16 Why do you have that site?

17 A. It's a forum for people to discuss the pros and
18 cons of First Racing -- or now known as iRacing.

19 Q. Let's take a look at -- I'm not going to -- if
20 this is going to bother you, I can shut it down for a
21 while?

22 A. It's not going to bother me.

23 MR. SCHWARTZ: What are we up to?

24 THE REPORTER: 9.

25 (Exhibit No. 9 was marked.)

1 templates and the high-res version of templates.

2 Q. Okay. So these aren't the entire modified
3 package?

4 A. I don't know. I did not create this.

5 Q. Oh, you didn't create this part of this document;
6 is that right?

7 A. (Moves head side to side.)

8 Q. You created --

9 A. I created the --

10 Q. The narrative?

11 A. The README.

12 Q. Okay.

13 A. I did not create -- I didn't own torn8alley.com
14 at this time.

15 Q. I see. Okay. Was any of the materials from --
16 this open wheel mod, were any of those incorporated in the
17 owr2k5 version?

18 A. Any what?

19 Q. Well, were any of the files that were part of the
20 mod that was being discussed in Exhibit 9 --

21 A. Not that I'm aware of.

22 Q. -- also incorporated in the owr2k5 version?

23 A. Not that I'm aware of.

24 Q. Now, when you were a part of the development team
25 for the owr2k5 version, did you own a copy of NASCAR 2003?

1 A. Yes.

2 Q. Okay. And did you -- I think you've already
3 addressed this in your interrogatory responses, but let's
4 just get it on the record. When you installed NASCAR 2003,
5 did you accept the end user license agreement that was --

6 A. Yes.

7 Q. -- part of that?

8 To your knowledge, did Joe Barlow own a copy
9 of NASCAR 2003 when he was working with you on that
10 development team?

11 A. I can only assume that he did.

12 Q. Okay. Why do you assume that he did?

13 A. Because he was involved in testing, so...

14 Q. You needed to have a copy of NASCAR 2003 in order
15 to be able to run it, correct?

16 A. Yes.

17 Q. Okay. And same question for Rob Peterson --

18 A. Yes.

19 Q. -- as far as you know, do you assume he had a
20 copy --

21 A. I know he had it because I've been to his house.

22 Q. Okay. You saw the copy of the box or something
23 like that?

24 A. I saw it on his PC.

25 Q. Okay. When you were doing the development work

1 for the owr2k5 did -- strike that.

2 Where did you get your copy of NASCAR 2003?

3 A. Some store. I don't know where.

4 Q. You bought it at a retail store here in Texas?

5 A. Yes.

6 Q. Have you -- I think we -- earlier this morning, we
7 spent some time talking about how the no CD file was
8 created, and you said you ran one file against the retail
9 version of NASCAR 2003, correct, to identify --

10 A. No, that's not what I said.

11 Q. Okay. Well, you did say that you did a compare
12 function between two files?

13 A. Yes, I did.

14 Q. And that helped to identify the code that was
15 related to the CD -- the requirement in NASCAR 2003 that a
16 CD be in a drive in order to be able to run, correct?

17 A. No, that's not what I said.

18 Q. Okay. Well, now I'm asking you: Is that what you
19 did, the compare function allow you to identify the code
20 that required the disk to be in the drive to run NASCAR
21 2003?

22 A. No.

23 Q. Okay. Well, then what did you -- once --

24 A. As I said, I took an existing no CD file from
25 another website, compared that to the owsc executable and

1 noted the differences and made the changes accordingly so
2 that owsc could load with a no CD patch commonly available
3 all over the world.

4 Q. Okay. So what file did you get -- what did you
5 use as the comparison to the owsc file?

6 A. An existing no CD file that I found somewhere on
7 the web.

8 Q. Was it a no CD file relative to NASCAR 2003?

9 A. Yes.

10 Q. Okay. And you don't know where you found it on
11 the web?

12 A. It could have been any number of places.

13 Q. So does that mean --

14 A. I don't remember.

15 Q. Okay. And was it in one of the racing series that
16 you previously testified to? In other words, was it
17 already in the truck version or --

18 A. No. It's a separate file. It's not part of the
19 retail game.

20 Q. Right.

21 A. It's not part of the mod as it were for the
22 Craftsman Truck Series or the Busch Series or anything
23 else. It's a separate file. Somebody created it, if I'm
24 not mistaken. I'm sure they even had it on the PWF site at
25 one time. I don't know where I got the no CD file that I

1 used. I got it, I compared it, I made changes accordingly.

2 Q. Now, is there a no CD file in the owr2k5 version?

3 A. I don't remember.

4 Q. Why did you think it was important to make a no CD

5 file available for the owsc version?

6 A. People asked for it.

7 Q. How did they ask for it?

8 A. They made a request on the --

9 Q. On the bulletin board?

10 A. -- on OW-Racing.

11 Q. Okay. And that was enough to have you do the

12 work, someone requesting it?

13 A. Yes.

14 Q. Do you run the OW -- the no CD file on your own

15 version?

16 A. No.

17 Q. Why not?

18 A. Because I don't need it.

19 Q. Because you have a copy of the game, right?

20 A. Yes, I have a copy of the game.

21 Q. And you run that in your disk drive?

22 A. No, I don't.

23 Q. Why don't you need it if you don't need to run the

24 disk?

25 A. Because I run another utility that makes a copy as

1 it were of that image and can run from the hard drive.

2 Q. Okay. So that utility allows you to avoid using
3 the CD in the hard drive?

4 A. Yes.

5 Q. And what is that utility called?

6 A. BlindWrite.

7 Q. And where did you get that one?

8 A. I have no idea. It came off the web somewhere.

9 It's a commonly available piece of software. It's not
10 anything untoward, as it were.

11 Q. Do you think -- does the BlindWrite software that
12 you use -- is that better than the no CD patch in a sense
13 of better functions or something?

14 A. I personally think it is.

15 Q. Why not just distribute that rather than the no CD
16 patch?

17 A. Why not distribute what?

18 Q. The BlindWrite.

19 A. I don't own it.

20 Q. You paid to license it?

21 A. Yes.

22 Q. Okay.

23 A. I use it for a number of things. It's not just
24 something I use for NR2003.

25 Q. So as I understand it, the BlindWrite allows you

1 **computers -- what training did you have?**

2 A. As I said, I had probably hundreds of training
3 classes associated with computers of some sort or another,
4 mostly with specialized functions for the job that I was
5 doing at the time.

6 **Q. Did you have any training or experience in**
7 **software development, so writing code?**

8 A. No.

9 **Q. How about in debugging?**

10 A. Debugging code?

11 **Q. Or debugging computer software?**

12 A. No.

13 **Q. Do you have a different answer if I were to say**
14 **code?**

15 A. No.

16 **Q. Okay.**

17 A. There's different kinds of debugging.

18 **Q. Yeah, I understand that, but I'm asking relative**
19 **to software.**

20 A. That's what I wanted to make sure.

21 **Q. Okay. Have you -- in the context of your**
22 **training, did you learn or use reverse engineering tools?**

23 A. Yes.

24 **Q. What tools did you use or learn to use?**

25 A. It's classified.

1 Q. So these are not commercially available tools?

2 A. No.

3 Q. Are you -- in the context of your military
4 experience or thereafter, are you familiar with the use of
5 reverse engineering tools?

6 A. Yes.

7 Q. What tools are you familiar with -- reverse
8 engineering tools?

9 A. Only the tools that I use.

10 Q. Which are?

11 A. Ultra Edit.

12 Q. Okay. Anything else?

13 A. No.

14 Q. Did you use Ultra Edit in connection with your
15 work on owr2k5?

16 A. Yes.

17 Q. And did you use Ultra Edit in connection with the
18 release of the owsc version that was previously out from
19 September of 2004 through March of 2005?

20 A. For the owsc?

21 Q. Yeah.

22 A. No.

23 Q. Okay. What files -- strike that, start again.

24 Did you use the Ultra Edit on the NASCAR 2003
25 executable file?

1 A. Yes.

2 Q. Did you use it on any other files that were part
3 of the NASCAR 2003 retail package?

4 A. Yes.

5 Q. What other files did you use it on?

6 A. It's also a text editor, so I used it as a text
7 editor.

8 Q. Okay. Did you use it as a text editor in
9 connection with the NASCAR 2003 executable file?

10 A. No.

11 Q. Okay. How did you use it in connection with the
12 NASCAR 2003 executable file?

13 A. It's a hex editing tool. It has a hex editing
14 function in it.

15 Q. So you used it as a hex editor?

16 A. Yes.

17 Q. Did you use any other tools in connection with
18 your work on the NASCAR 2003 executable file?

19 A. In connection with what?

20 Q. With your work on the NASCAR 2003 executable file
21 as part of your development of owr2k5?

22 A. Okay. You've got to break it down piece by
23 piece --

24 Q. Okay.

25 A. -- in order for me to answer that question

1 correctly.

2 Q. All right. Did you use any other tools in
3 connection with the NASCAR 2003 executable -- other than
4 the Ultra Edit.

5 A. No.

6 Q. Okay. Did you use any other tools in connection
7 with your work as a developer on owr2k5?

8 A. Yes.

9 Q. What other tools did you use?

10 A. 3DS Max.

11 Q. That's 3DS Max? Is that what you called it?

12 A. Yes.

13 Q. And what does 3DS Max do?

14 A. It's a 3-D modeling tool.

15 Q. Okay. But from your previous response, you didn't
16 use that for your work on the executable. You used it for
17 other parts on the file, correct?

18 A. For 3-D parts. That's why it's called 3-D.

19 There's nothing associated with 3DS Max that applied to the
20 executable file.

21 Q. I got it.

22 Did you use any other tools in connection
23 with your work on the owr2k5 other than Ultra Edit and
24 3DS Max?

25 A. Yes.

1 Q. What other tools did you use?

2 A. Winmip2.

3 Q. What does Winmip2 do?

4 A. Winmip2 takes a car file out of the NR2003 game
5 and allows me to export it so I can paint it or any number
6 of other things, but it's a utility that's been around
7 since the N4 days, as I recall.

8 Q. Okay. And presumably, you did not use Winmip2
9 with respect to the NR2003 executable?

10 A. Not with the executable, no.

11 Q. Okay. Any other tools that you used --

12 A. Not that I recall.

13 Q. -- with the -- let me just finish my sentence so
14 she's got it on the record -- with respect to the work on
15 the owr2k5 file?

16 A. No.

17 Q. Okay. Now, do you, in the context of your
18 military training, get experience in developing Microsoft
19 Windows operating software -- or operating systems
20 software?

21 A. No. Microsoft didn't exist when I was in the
22 military.

23 Q. Okay. Since you left the military, do you have
24 experience in developing for the Microsoft Windows system?

25 A. No.

1 A. No, that's not what I said.

2 Q. Okay. I thought that is what you said. So what
3 are you --

4 A. You asked could I change in the game how the car
5 reacts. The answer is yes --

6 Q. Well --

7 A. -- that's in the garage.

8 Q. I understand that. I thought I asked something
9 else. What I'm asking you is: In the game, is there an
10 interface that allows the user to modify the physics that
11 are in the executable?

12 A. Not that I'm aware of.

13 Q. Okay. Are you aware of any measures -- strike
14 that.

15 Well, are you aware of any measures by which
16 a user may distribute a copy of NASCAR 2003 that does not
17 require a CD key?

18 A. No.

19 Q. So the no CD functionality, as far as you know,
20 requires the use of a CD key?

21 A. Yes.

22 Q. And likewise for the BlindWrite, that requires the
23 use of a CD key?

24 A. Yes.

25 Q. Are you aware of any functionality in the game

1 that requires the user to have the disk that they bought on
2 retail in the machine when they're using the game?

3 A. Say that again.

4 Q. Are you aware of any functionality in the NASCAR
5 2003 retail version that requires the user to have the disk
6 that they purchased in the CD drive of their machine when
7 they're running the game?

8 A. Without using an external program?

9 Q. Right.

10 A. It's my understanding that the CD has to be in a
11 CD drive.

12 Q. Okay. So the only way to avoid using a CD is
13 using an external program like the BlindWrite --

14 A. Or a no CD patch.

15 Q. -- or having a no CD patch? Okay.

16 MR. SCHWARTZ: We've been going a little over
17 an hour. Do you want to take a little break?

18 THE WITNESS: I could use a break, yes.

19 (Break was taken from 2:41 p.m.

20 to 2:46 p.m.)

21 Q. (BY MR. SCHWARTZ) You're still under oath,
22 Mr. Robinson?

23 A. Yes.

24 MR. SCHWARTZ: What was that last question
25 and answer, please?

1 (Requested Portion was Read.)

2 THE REPORTER: If you wouldn't mind,
3 Mr. Robinson, kind of let him finish his questions. We're
4 overlapping a lot since we've come back from lunch.

5 Q. (BY MR. SCHWARTZ) I'm sorry. Usually, I give
6 that as part of my admonitions at the beginning of the
7 deposition to let me finish my question before you give
8 your answer -- you probably know what I'm asking -- because
9 it's easier on the court reporter.

10 Do you -- do you also own a copy of Hex
11 Workshop 4.2 -- or did you?

12 A. No.

13 Q. Why did you commence work on the owr2k5? What
14 were you hoping to accomplish?

15 A. It was a follow-on to the original open wheel mod
16 that we did.

17 Q. The original one being the one that's the subject
18 of Exhibit 9?

19 A. Yes.

20 Q. Okay. And what -- what was your goal as far as
21 creating a follow-on? What did you want to accomplish?

22 A. I wanted a up-to-date, realistic version of an
23 open wheel car.

24 Q. Did you think that the version that was reflected
25 on Exhibit 9 was not realistic?

1 A. No.

2 Q. So it's fair to say that you weren't doing it to
3 try to improve sales of NASCAR 2003?

4 A. No.

5 Q. No, it's not fair to say, or no, you were trying
6 to improve?

7 A. I wasn't trying to improve anything as it relates
8 to sales. The game had been off the market.

9 Q. Okay. When you say "the game had been off the
10 market," what do you mean by that?

11 A. The game wasn't available -- it's not available as
12 a new product anymore that I know of. You get it
13 secondhand through eBay or Amazon or places like that, so
14 anything I was doing would have no effect on sales
15 whatsoever.

16 Q. That's true. When did you commence work on open
17 wheel racing -- owr2k5?

18 A. As I said before, in November roughly of 2004.

19 Q. Now, at the time that you released the mod that's
20 the subject of Exhibit 9, was the game off the market?

21 A. Essentially, I would say yes.

22 Q. When you say "essentially," what does that mean?

23 A. That means the game came out in 2003. A patch was
24 released in September of 2003, and somewhere between the
25 time the game was released and September of 2003, Papyrus,

1 Sierra, Vivendi, whatever, basically shut their doors. So
2 therefore, from my knowledge, the game was off the market.
3 At that point, I don't -- I mean, I don't know if you could
4 still get new games. I wasn't in the market to buy a new
5 game because I already had two copies.

6 Q. When you released the owsc mod --

7 A. Yes.

8 Q. -- that was -- that was in part of the product of
9 that application that you got from Don, was the game off
10 the market at that time, the game being NASCAR 2003?

11 A. I would say yes.

12 Q. Same reasons?

13 A. Yes.

14 Q. Did you ask permission of anyone to do the
15 development for owr2k5?

16 A. No.

17 Q. Did you ask permission from anyone to do the
18 development of its predecessor, the one that's the subject
19 of Exhibit 9?

20 A. No.

21 Q. Did you ask permission of anyone to do -- or to
22 distribute the modification that was the owsc?

23 A. Say that again.

24 Q. The owsc file that you had testified was
25 previously distributed as a function of the application

1 that Don sent you --

2 A. Yes.

3 Q. -- did you ask permission of anyone to distribute

4 that before you did so?

5 A. No.

6 Q. Now, you testified earlier that you were a beta

7 tester for First Racing for a short period of time,

8 correct?

9 A. Yes.

10 Q. And what materials, if any, did you receive in
11 connection with your beta testing?

12 A. What materials did I receive in what context?

13 Q. Well, did you get anything from First Racing as
14 part of being a beta tester?

15 A. I got a modified executable.

16 Q. Okay. That would run with the existing NASCAR
17 2003 code base?

18 A. Well, used that as a base, as I understand it,
19 yes.

20 Q. Okay. And then were there anything else -- was
21 there anything else that you received from First Racing?

22 A. Aside from an NDA?

23 Q. Well, you did receive a copy of a nondisclosure
24 agreement, correct?

25 A. Yes.

1 Q. That you signed?

2 A. Yes.

3 Q. Okay. Did you receive any other materials from

4 First Racing other than a modified executable and an NDA?

5 A. I received access to their beta testing forum --
6 discussion forum.

7 Q. Did you use that access?

8 A. Briefly.

9 Q. And did you evaluate the product at all, the beta?

10 A. Did I evaluate it how?

11 Q. Well, did you participate in any practice races or
12 anything of that nature --

13 A. Yes.

14 Q. -- using the new executable they sent you?

15 A. The modified executable that they sent, yes.

16 Q. Okay. Any -- anything else that you did in
17 connection with your work as a beta tester?

18 A. I painted some cars for my team. That's about it.

19 MR. SCHWARTZ: Let's mark this as Exhibit 10.

20 (Exhibit No. 10 was marked.)

21 MR. SCHWARTZ: Joe, we've placed in front of
22 the witness a compilation of postings that I'm going to get
23 him to see if he can identify.

24 Q. (BY MR. SCHWARTZ) And you can take your time,

25 Mr. Robinson, and look through this Exhibit 10, and I'll

1 2003?

2 A. I don't know.

3 Q. Now, to accomplish your goal of creating more
4 realistic open wheel racing mod, could you have started
5 from scratch?

6 A. Started from scratch with what?

7 Q. With -- started from scratch writing the code base
8 that would allow the physics models to operate in such a
9 way that you would have the appearance of cars driving
10 around the track?

11 A. Yes.

12 Q. Is that something that you could have done
13 yourself without the NASCAR 2003 code base?

14 A. Given enough time, yes.

15 Q. How much time do you think it would have taken for
16 you to have developed --

17 A. I have no idea.

18 Q. Thousands of hours probably?

19 A. I have no idea.

20 Q. Did that ever -- did you ever contemplate that as
21 an option?

22 A. No.

23 Q. Okay. I'm getting a setup detected an expiration
24 issue, and I'm adding a shortcut to my desktop. Would it
25 be fair to say that using NASCAR 2003 as a base for your

1 owr2k5 provided a significant savings of time?

2 A. I don't know because I didn't quantify what the
3 time would be to do it on my own, so I don't know if it
4 saved a significant amount of time.

5 Q. I'm going through the registration screen now,
6 putting in my name.

7 MR. RYAN: Has that game disk been marked as
8 an exhibit yet?

9 MR. SCHWARTZ: It has not. It's in my
10 computer, we can mark the actual jewel case.

11 MR. RYAN: I want the CD marked.

12 MR. SCHWARTZ: Okay.

13 Q. (BY MR. SCHWARTZ) Vivendi's asking me all kinds
14 of questions about what do I want.

15 THE REPORTER: Do you want me to mark this?

16 MR. SCHWARTZ: We can mark them both with the
17 same number.

18 (Exhibit No. 12 was marked.)

19 Q. (BY MR. SCHWARTZ) I'm going to exit out of the
20 video game's preferences screen and go back to NASCAR
21 Racing 2003 and update the product.

22 Now, while this is updating, when you were
23 working on the NASCAR 2003 executable, did you have values
24 for the retail versions of the physics models? In other
25 words, did you know what the values were for the physics

1 models that are contained in the executable?

2 A. Did I have values for what?

3 Q. For the physics models that are contained in the

4 NASCAR 2003 retail version of the executable?

5 A. No.

6 Q. How did you know what to change in the retail

7 version to make the open wheel modification to be more

8 realistic for --

9 A. Trial and error.

10 Q. So when you say "trial and error," what does that

11 mean?

12 A. Exactly what it says.

13 Q. Well --

14 A. Try a value and see what happens. If it doesn't
15 react the way I want it, try a different value.

16 Q. Okay.

17 A. If it does react the way I want it, move on to the
18 next value.

19 Q. And so how did you know where in the NASCAR 2003
20 executable to change those values?

21 A. Through studying the code. I mean, plain and
22 simple, using a hex editor, you can look at anything.

23 Q. So you were studying binary code?

24 A. No. I wasn't studying binary code. I was
25 studying hex code.

1 Q. Okay.

2 A. That's why it's called the hex editor. When you
3 open up an executable or any other file in a hex editor, it
4 displays it in hex.

5 Q. Okay.

6 A. So I was looking at the hex code, and took quite a
7 number of hours to determine what it was I was looking for
8 because I didn't know what I was looking for.

9 Q. So by looking at it -- and you would change
10 certain values in the hex code and then try to run the game
11 again and see how it would work --

12 A. Yes.

13 Q. -- is that what you did?

14 And through trial and error, you were able to
15 isolate what parts of the executable related to the weight
16 of the car, for example?

17 A. Whatever value I was looking for, yes.

18 Q. How many different values were you looking for
19 when you did this?

20 A. I don't recall.

21 Q. Dozens?

22 A. Half a dozen or so.

23 Q. Can you share with us what it was that those
24 values represented? The weight of the car, was that one of
25 them?

1 A. Yes.

2 Q. Okay. What other ones can you recall?

3 A. I don't remember.

4 Q. Was the steering effect on the car one of them?

5 A. What do you mean "the steering effect"?

6 Q. The way that the car reacted to the instruction
7 that it steer on the game?

8 A. No, not that I recall.

9 Q. Was traction one of them?

10 A. No.

11 Q. Okay. So other than the weight of the car, you
12 can't recall any of the other variables that you were --
13 through this extended trial and error process -- trying to
14 figure out?

15 A. Well, that's privileged information. I'm not
16 going to give you that information.

17 Q. How is it privileged?

18 A. Because. If I sit here today and tell you what
19 values that I changed, it's conceivable -- at least in my
20 mind, -- that Steve Myers or whoever can go and take that
21 and create the same thing. Why would I give you that? Why
22 would I give you that information? You already have it.

23 Q. Well, the reason you give it to me is because
24 you're here at a deposition under a subpoena, and I'm
25 asking you a question and you're obligated to give me an

1 answer. If you want to --

2 A. And my answer was that I don't remember all the
3 values that I changed.

4 Q. I understand that. I'm now trying to explore what
5 ones you do remember if you don't remember all of them.

6 MR. RYAN: If there's confidential
7 information here, then I think in fairness, given the
8 circumstances here, where I can't be there -- couldn't be
9 there through (inaudible).

10 THE REPORTER: I can't hear you, sir.

11 MR. SCHWARTZ: Yeah, Joe, can you repeat your
12 objection?

13 MR. RYAN: I said if there's some
14 confidential information here, in the circumstances where
15 you have the client listening and we have no
16 confidentiality agreement in place, then I don't think it's
17 fair to demand that the -- that the witness provide such
18 information at this point. I think you and I should
19 discuss it after the deposition.

20 MR. SCHWARTZ: Well, here's my problem with
21 that is we're down here. I don't intend to fly down
22 here -- right away at least -- and take his deposition
23 again. I'm prepared to stipulate on the record to whatever
24 confidentiality you want.

25 MR. RYAN: Yeah, but you've got Steve Myers

1 MR. SCHWARTZ: Okay.

2 Q. (BY MR. SCHWARTZ) Let me just see if I can
3 understand exactly what it is that you're concerned about
4 sharing with us. Is it the number of variables that you
5 adjusted, or is it -- what is it exactly that is
6 confidential in your mind?

7 A. I created an open wheel simulation based off of
8 this particular game. If I give you the information that I
9 used, then conceivably you could go create the same thing
10 and then sell it using my information.

11 Q. Okay. So when you use that term "information" in
12 your answer, are you saying that whatever variables you
13 replaced in the executable, that's -- that's what you're
14 concerned about, whatever values you put in by the hex
15 editing process?

16 A. Yes. You guys have the file. You can go look at
17 it. You already know what was modified in the files, so
18 what else is it that you want? I don't recall. It's been
19 almost a year since I've done this. I haven't messed with
20 it since. I don't recall all the values that were changed
21 inside the executable. Some were related to the interface
22 in the executable. Some were related to the physics values
23 in the car. I don't remember them all, plain and simple.
24 I mean...

25 Q. Well, I just want to understand your -- your

1 concern. If your concern is you don't remember them all,
2 that's fine. It's not a memory test. If your concern is
3 that you do remember some of them, but you don't want to
4 share -- let me finish please -- because you're worried
5 that Steve Myers or somebody else on the phone may take
6 commercial advantage of what you do remember, that's
7 another set of issues.

8 So you know, I'm -- I'm not surprised you
9 don't remember whatever the hex editing values are that you
10 put in there a year ago. Sounds reasonable to me. But I'm
11 asking -- my question wasn't directed at that. It was more
12 directed at what were the -- what was the type of
13 information. Remember, I was focusing on the weight of the
14 car. You gave me that answer.

15 A. Right.

16 Q. I said what are the other things that you were
17 trying to isolate in terms of the variables? You said
18 there was about half a dozen -- I think is what you
19 testified.

20 A. At least half a dozen. There could be more.

21 Q. Okay.

22 A. There was spring rates, shock rates, weight
23 distribution, maximum weight allowed, gas -- fuel cell
24 size, fuel cell location, front and rear wing adjustments.
25 Those are the ones that jump out at me -- the obvious ones

1 right away. I mean, there -- I -- there probably is other
2 ones, but those are the ones I recall right at the moment.

3 Q. And so the way that you were doing this was that
4 you had your hex editor, and you were trying to isolate
5 where in executable file you could change values that would
6 change the way that those things would operate as you ran
7 the game; is that right?

8 A. That's correct.

9 Q. So that must have been an extremely time consuming
10 process?

11 A. Yes, it was.

12 Q. And after you figured out which variable started
13 adjusting the wing issue that you just identified, you then
14 had to start playing with what values you put in there so
15 that you could make it work the way you wanted to work?

16 A. Yes.

17 Q. So it's just finding -- it's finding what values
18 you can put in that will make the car perform the way you
19 thought it should perform relative to more realistic open
20 wheel racing experience; is that fair?

21 A. Yes.

22 Q. Okay. And were you the only one in your
23 development team that was actually doing that trial and
24 error with respect to the -- these variables?

25 A. Yes.

1 Q. Now, while we were talking, the entry screen
2 stopped at a Sierra update screen that says that we need to
3 update through NASCAR 2003 Series 1.2.0.1 patch, and I'm
4 downloading that patch from Sierra.

5 Now, I think you also mentioned in your
6 answer, Mr. Robinson, that other than the car -- the
7 characteristics of the way the cars were to operate on the
8 track, there were also things that you addressed relating
9 to the -- interface I think was the term that you used.

10 What do you mean by that?

11 A. Some wording was changed in some of the garage
12 screens inside the game.

13 Q. And that was -- that wording resided in the
14 executable, or was that also --

15 A. Yes.

16 Q. Okay. Anything else that you can recall that you
17 changed in terms of categories of stuff?

18 A. We added realistic open wheel sounds because there
19 are sounds in the game that simulate the car idling on pit
20 row, taking off from pit row, changing gears, the sound
21 that a car makes when it changes gears, the sound that it
22 makes when it's running 10,000 RPMs down the backstretch at
23 Texas. That sound is unique from the sound that's sitting
24 there idling on pit row. We added in what we considered to
25 be more realistic sounds than using the existing sounds

1 tool that allows you to refer back to previous iterations?

2 A. Do I what?

3 Q. Have you ever heard of a term called -- or a
4 product called SourceSafe?

5 A. I've heard of it. I don't use it.

6 Q. Okay. What code were you working in?

7 A. What code was I working in?

8 Q. You just worked hex editing. You weren't --

9 A. Hex editing.

10 Q. Okay.

11 A. That's all I -- I don't have access to anything
12 else.

13 Q. You never ran a -- you never decompiled the --

14 A. No.

15 Q. -- NASCAR 2003 code?

16 A. No.

17 Q. Do you have hard copies of any of these versions
18 of your hex editing, you know, that you printed out, saved
19 for any purpose?

20 A. No.

21 Q. When you --

22 A. You're suggesting a hard copy printout of over a
23 million lines of code?

24 Q. Well, no. I'm asking you what you kept.

25 A. Well, you're asking me if I had hard copies of a

1 million lines of code?

2 Q. I don't know what you printed out or not.

3 A. No, I don't.

4 Q. So when you were changing your -- your trial and
5 error process and you were going through a million lines of
6 code looking for variables -- is that your testimony?

7 A. No.

8 Q. Okay.

9 A. There are over a million lines of code in this
10 particular executable. Did I go through every one of them,
11 no, I did not.

12 Q. How did you know where in those millions of line
13 of code to look for these --

14 A. I didn't know where to look.

15 Q. Okay.

16 A. I told you I found it by trial and error.

17 Q. So --

18 A. It's not rocket science. You can look at an
19 executable, and with some amount of logic applied, get to
20 where you're trying to get to looking at the different
21 values. There is some amount of intelligible information
22 in there, so one need only apply a very small amount of
23 logic to determine -- or at least make some attempt at
24 finding what it is you're looking for. It's not all that
25 trivial.

1 Q. So as you were applying your trial and error
2 process and you were successful in isolating something that
3 affected the weight or not, how did you keep track of what
4 it was that you had already tried and you had succeeded or
5 failed?

6 A. On blank scratch paper --

7 Q. Okay.

8 A. -- printer paper that I'd reach up and grab right
9 out of my printer.

10 Q. And then you'd have an address or something of
11 that nature --

12 A. There was a hex address --

13 Q. Hex address.

14 A. -- that's either a pointer or relative indicator
15 of where it points to in the code.

16 Q. Okay. Now, the scratch paper that you used, where
17 is that?

18 A. It's gone. It's trashed. I don't have it. I
19 wish I did have it.

20 Q. And you trashed it when?

21 A. Months and months and months ago. Probably --
22 again, probably when I went through a cleanup process in my
23 office back in May, when I deleted a bunch of the other
24 stuff, is when I got rid of it. I didn't need it. I don't
25 just keep stuff around to keep it around.

1 Q. Was there anything in particular in May that
2 caused you to go through that cleanup process?

3 A. No. Just normal everyday cleanup.

4 Q. And the office that you mentioned, was that a home
5 office or --

6 A. That's my office at home, yes.

7 Q. Okay. Now, would you say that that logic that you
8 applied in order to be able to undertake this hex editing
9 process, is that something that any person on the street
10 could use to be able to modify it?

11 A. I don't know what every person on the street's
12 capable of doing.

13 Q. Well, would you say that it takes an expertise in
14 computer software in order to be able to understand how to
15 use a hex editor and how to identify those variables?

16 A. I can't make a judgment to that. I'm an engineer
17 by trade, so perhaps it's simpler for me. Could you do it?
18 I don't know. I don't know what your skill set is. Could
19 this young lady do it? I don't know. Maybe she could.
20 First, you have to have an interest in doing it.

21 Q. In your -- do you have -- in your experience in
22 interacting with members of the -- your ow-racing.com board
23 or site, in your experience in dealing with them, do most
24 of them have that capability that you've just identified?

25 A. I don't know what their capabilities are.

1 Q. So in communicating with members on those boards,
2 whether it's OW-Racing or torn8alley.com, are you saying
3 that those members -- at least in your estimation -- they
4 have the ability generally to do hex editing?

5 A. I don't know.

6 Q. We've downloaded the patch and it's now asking
7 that we restart the computer. And I'm clicking through a
8 Sierra license agreement and a README file, and I'm
9 installing the patch in the -- on the game -- or on the
10 computer, rather, to NASCAR Racing 2003 Season.

11 MR. RYAN: You may be at the point where you
12 need to put an exhibit number on that computer.

13 MR. SCHWARTZ: May be.

14 Q. (BY MR. SCHWARTZ) Now, did you -- when you were
15 doing your work on the owr2k5 product -- consider
16 distributing instructions to people how to do this hex
17 editing as opposed to an application that would install --

18 A. No.

19 Q. Why didn't you just tell people how to do this?

20 A. Tell them how to do what?

21 Q. Do the changes that you were undertaking yourself?

22 A. It's my belief most people aren't interested in
23 that, for one. So if they're not interested, then they're
24 not going to do anything. Therefore, it was easier to
25 distribute what I distributed.

1 Q. Why did you care -- I just restarted my
2 computer -- why did you care whether people were interested
3 or not interested?

4 A. I don't care whether people were interested or not
5 interested. That wasn't what you asked me.

6 Q. Well, I think you just said that you didn't
7 believe people were interested in doing this kind of thing.

8 A. That's my belief, yes.

9 Q. Right. And this kind of thing you meant was the
10 hex editing; is that true?

11 A. Not specifically hex editing, but creating mods
12 for the game is what I'm referring to.

13 Q. Okay.

14 A. Hex editing is an essential part of that for
15 creating a modified executable. My belief is that most
16 people aren't interested in that. Most of the people that
17 play this game want something for free, plain and simple.
18 All they want to do is play the silly game, that's what
19 they're interested in, nothing more, nothing less. If
20 that's my belief to what they're interested in and what I
21 know from people wanting something for free, then do I have
22 to waste any more time to provide them with instructions on
23 what to do and what not to do, no. I made a conscious
24 decision to do what I did and that's what I did.

25 Q. Okay.

1 A. So to try to put words into my mouth or ask me
2 about some supposed way of doing business, it's moot.
3 Doesn't make any difference. This is what I did.

4 Q. Well, I'm asking you to try to understand why you
5 did what you did. And I think you've answered it, because
6 you wanted people to use the modification; is that right?

7 A. Essentially, that's all this was created for. I
8 don't benefit from it at all except spending an inordinate
9 amount of time creating it, and now even spending an even
10 more inordinate amount of time having to defend what I did,
11 which we haven't even touched on the reason I'm here.

12 Q. You're thinking we haven't touched on the reason
13 why you're here?

14 A. The complaint is all about violating copyrights.
15 You haven't even touched on that yet.

16 Q. Well, I think that remains to be seen actually.
17 Is there anything else that you did in
18 connection with creating the owr2k5 zip file that you
19 haven't described to us already?

20 A. Not that I can think of.

21 Q. Okay.

22 A. I mean unless you're looking for something
23 specific, I can't think of anything else I might have done.

24 Q. Okay. Now, we've just restarted my computer -- I
25 just restarted my computer, and it's now got an Open Wheel

1 Racing 2005 Season icon on the desktop as well as the
2 torn8oalley.com open wheel racing mod icon. So assuming I
3 have -- and also NASCAR Racing 2003 Season icon.

4 A. What was the Torn8oAlley thing you're talking
5 about?

6 Q. I'll print it out. I hope I can print it out.
7 Evidently, it's not letting me print out the desktop, which
8 is a surprise to me. So it's got the torn8oalley.com open
9 wheel racing mod. Do you see it down --

10 A. What is that -- that's just an HTML file?

11 Q. Well, I'm double-clicking on it, and if that comes
12 up, we'll print it out.

13 A. I'm guessing that is Exhibit 9.

14 Q. Well, it's not -- it's coming up from a web
15 archive.

16 A. That's just where you got it from.

17 Q. Yeah.

18 A. That's Exhibit 9.

19 Q. Okay. And then item -- the Open Wheel Racing 2005
20 Season, that's this owr2k5 file?

21 A. Yes.

22 Q. Okay. So in your experience -- now that hopefully
23 I've installed this stuff -- do I just double-click on that
24 and it should open up into your version, your mod?

25 A. Actually, I think it's probably going to ask you

1 to calibrate your graphics and stuff like that.

2 Q. Well, it's giving us a message that says it failed
3 to start because of binkw32.dll. Does it need to be
4 reinstalled then?

5 A. Potentially.

6 Q. Let me just continue to go through this, and if we
7 get a chance to get back to that, we will.

8 MR. SCHWARTZ: Do you want to take another
9 short break?

10 THE WITNESS: Sure.

11 MR. SCHWARTZ: Five minutes or so?

12 THE WITNESS: Yeah.

13 (Break was taken from 4:05 p.m.
14 to 4:10 p.m.)

15 Q. (BY MR. SCHWARTZ) Other than the trial and error
16 process that you previously testified to, did anyone other
17 than yourself give you any information as to what needed --
18 what needed or could be changed within the NASCAR 2003
19 executable?

20 A. No.

21 Q. So when you received that application from Don
22 that related to the owsc product --

23 A. Uh-huh, yes.

24 Q. -- did you study how that -- what that changed or
25 how that worked?

1 A. I believe I attempted to, but it was -- I forgot
2 exactly what it was written in, but it didn't -- it didn't
3 make any sense to me the way that it was constructed, so I
4 just never screwed with it.

5 Q. Okay. Did you ever ask Don to give you any advice
6 with respect to how to modify the NASCAR 2003 --

7 A. No.

8 Q. -- executable?

9 I know we covered some of the tools that you
10 used, but I'm going to ask about a few more. Did you use a
11 assembled table dump tool?

12 A. No.

13 Q. I think you already testified you didn't use a
14 dissembler, correct?

15 A. That's correct.

16 Q. Did you use any form of a debugger or anything of
17 that nature with respect to NASCAR 2003?

18 A. No.

19 Q. Did you develop any tools yourself that you used
20 in connection with your work on NASCAR 2003?

21 A. No.

22 Q. So the Ultra Edit was the only tool you used?

23 A. Yes.

24 Q. And we may have covered this already, but when you
25 used the Ultra Edit to do this trial and error process, did

1 you save the revised version, the new trial, as a separate
2 file?

3 A. The revised version --

4 Q. I'm sorry if I wasn't clear. So you have the
5 NASCAR 2003 executable and you've been going in and doing
6 trial and error changes to it using --

7 A. Correct.

8 Q. -- the hex editor. And so once you make some
9 changes as part of the trial, you then save the changed
10 version under some other name --

11 A. No.

12 Q. -- and then run it?

13 A. No.

14 Q. How did it work then once you made the change?

15 A. Saved it as the file name it was --

16 Q. Okay.

17 A. -- and then ran the thing and see what it did.

18 Q. Okay. And then let's assume it didn't work the
19 way you wanted it to work, so that particular trial was an
20 error?

21 A. That particular trial was an error.

22 Q. Okay. Then what do you do to do the next trial?

23 You open it up again with the hex editor?

24 A. Repeat the same process.

25 Q. Okay.

1 A. Go back and look at my note where I wrote down
2 what hex address it was and change it to a different
3 value --

4 Q. Okay. And then --

5 A. -- and ultimately arrive at the desired effect for
6 whatever it was I was changing.

7 Q. And the -- when you reopened it, were you
8 reopening the version that you had already changed, or did
9 you go back to an original version, reopen it and make the
10 change?

11 A. It was the version that I had just changed.

12 Q. Okay. So it was basically serial. You take the
13 original and you change it a little bit, close it, open it
14 up, change it a little more, close it?

15 A. Very, very small steps.

16 Q. Okay. At the -- at the end of the day, if you've
17 got that -- what did you say a million lines of code on the
18 hex editor?

19 A. Something like that.

20 Q. How many -- how many actual lines do you think you
21 wound up changing after you did all that trial and error?

22 A. Cumulatively?

23 Q. Yeah.

24 A. Doing trial and error?

25 Q. No. In terms of the final version, once you had

1 settled on what each of the variables were that you did --
2 once you discovered them and then settled on what the
3 change should be and saved it and it was -- you're done
4 with the weight of the car and now you're moving on to the
5 next thing. By the time you were done, how many lines of
6 code do you think you actually wound up changing of that
7 million?

8 A. I don't know. I changed several values. What
9 effect or if those changed other lines of code ultimately,
10 I don't even know. All I did was change values for a
11 particular component on the vehicle to -- you know, in some
12 cases, there was a min and a max. So it might be two
13 values for a given variable. Could be three values. Could
14 be -- I don't think there was anymore than, as I recall,
15 three values for any given variable, but basically, I'm
16 changing a seed value to use in the rest of the executable.
17 So however many variables I ended up changing -- which as I
18 said before, I don't remember all of them -- that's how
19 many variables I changed. How many lines of code that
20 affected, I have no clue.

21 Q. Did you attempt to change every variable that was
22 in the game or just a few?

23 A. A handful. I mean, no. Why would I change every
24 variable in the game?

25 Q. Well, I'm just trying to understand in terms of

1 scope. If there is -- you know, we're talking about lines
2 of code, but we could change that to variables. Do you
3 have an understanding of how many variables are
4 incorporated in NASCAR 2003?

5 A. (No response.)

6 Q. Is it fair to say thousands?

7 A. I have no idea. I wouldn't even hazard a guess.

8 Q. Okay. Could be thousands?

9 A. Could be tens of thousands.

10 Q. Okay.

11 A. Could be ten.

12 Q. Okay. And in your recollection, you changed a
13 half a dozen or maybe slightly more of those; is that
14 right?

15 A. More than a half a dozen. Less than 50, I'm
16 guessing.

17 Q. Okay.

18 A. I mean, I -- I just don't remember.

19 Q. Have you heard of a tool developed by the
20 U.S. Pits that they call the patch tool?

21 A. I've seen it in postings on the U.S. Pits,
22 reference to it, but that's the only thing I know about it.

23 Q. You've never obtained a copy of it?

24 A. No.

25 Q. And you mentioned that the thing that you obtained

1 from Don -- I think you said something in your
2 discussion of it -- or your description of it was something
3 along the lines of what happened in the Tim McArthur case.
4 Do you have an understanding of what tool or tools Don used
5 to create his application?

6 A. No. I don't even know if he created it. All I
7 know is that's who I got it from. I don't know where it
8 came from before him. I'm assuming he created it, but how
9 the hell do I know.

10 Q. Did you -- did you keep any records that would
11 allow you to modify NASCAR 2003 -- if you wanted to do it
12 in the future that would allow you to modify it more
13 easily? What I mean is: Now, that you know where the
14 addresses are or you did discover them through trial and
15 error, did you keep anything that would allow you to --

16 A. No, but I certainly wish I would have.

17 Q. Why is that?

18 A. Because I'd like to modify it some more with
19 different models. It wouldn't take me near as long to
20 recreate it as it did originally because I have a very good
21 idea where to look this time where I didn't originally.
22 But yeah, it would be a heck of a lot simpler if I was able
23 to, you know, create a slightly different version of a
24 Sprint car or something or a different open wheel car or
25 anything else. It would be a lot simpler, but

1 events that apply for open wheel racing?

2 A. What do you mean?

3 Q. Well, in the course of a race, a NASCAR 2003,

4 there were a bunch of different things that could happen.

5 Like, there were crashes or other things, correct?

6 A. Yes.

7 Q. Same options --

8 A. Yes.

9 Q. Let me finish -- thank you for answering, but let
10 me just finish my question. Same options for open wheel
11 racing 2k5?

12 A. Yes.

13 Q. Now, are there skill level calibrations in NASCAR
14 2003? Is there an expert driver, novice drivers?

15 A. Are there experts and what?

16 Q. Are there skill level calibrations? I used the
17 word "novice," but are there different levels of skill that
18 can be set for using NASCAR 2003?

19 A. Not that I'm aware of.

20 Q. Okay. There are variables that you can set,
21 though, when you're setting up the game, correct?

22 A. There's variables to set up the game, which have
23 little to do with skill.

24 Q. Okay. The same variables apply when you set up
25 open wheel racing?

1 A. As far as I know, yes.

2 Q. Okay. It just incorporates the variables that
3 were in NASCAR 2003 for the open wheel racing game, doesn't
4 it?

5 A. As far as I know, yes.

6 Q. Okay. So other than the cars, the way they look
7 and sound and then the way the cars perform on the track,
8 it was basically the same game, wasn't it?

9 A. No.

10 Q. How was it different other than those --

11 A. It's incredibly different. You can't take a
12 NASCAR car around Texas at 225 miles an hour.

13 Q. That's the way the car operates on the track,
14 right?

15 A. Yes.

16 Q. That's the physics model that --

17 A. It's the performance of the vehicle.

18 Q. Right. So my question is: Other than the cars --
19 so how they appear, the sounds -- which you've described --
20 and the way the cars perform on the track, it's the same
21 game, isn't it?

22 A. If -- I don't know how to answer that. I mean, it
23 could be construed -- some people could call it a
24 completely different game. I mean, the GTP mod that first
25 allowed to happen completely different, yet it's the same

1 game.

2 Q. Well, okay.

3 A. Performance of the cars is different. The tracks
4 are different, the executable modified. The paint schemes
5 look different, but it's the same game, same concept. But
6 it looks completely different than what NASCAR 2003 does.

7 So is it the same game, I don't know.

8 Q. Well, I identified three things that -- at least I
9 thought from your testimony were different; the look of the
10 cars, the performance of the cars and the sounds. Are
11 there other things that --

12 A. There's some artwork, as I discussed.

13 Q. Okay.

14 A. I don't recall specifically what the artwork is,
15 but there's artwork.

16 Q. So -- I don't want to interrupt you.

17 A. Go ahead.

18 Q. So as far as you're concerned, all these different
19 series that we've talked about are the same game. They're
20 just a different look to them. Whether it's TPTCC or
21 trucks or Trans-Ams or open wheel, it's all the same game.
22 It's just a different look and a different performance?

23 MR. RYAN: Objection.

24 A. The engine being used to play the game is the
25 same. The game is different.

1 MR. SCHWARTZ: Okay.

2 MR. RYAN: And I apologize that you cannot
3 hear me, but that's what I've been putting up with for
4 eight hours.

5 MR. SCHWARTZ: Anything else?

6 MR. RYAN: That's it.

7 MR. SCHWARTZ: Okay. We're off the record.

8 (End of Proceedings at 5:20 p.m.)

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CORRECTIONS AND SIGNATURE			
2	WITNESS:	DATE OF DEPOSITION:	
3	PAGE/LINE	CORRECTION	REASON FOR CHANGE
4	_____		
5	_____		
6	_____		
7	_____		
8	_____		
9	_____		
10	_____		
11	_____		
12	_____		
13	_____		
14	_____		
15	I, TIM ROBINSON, have read the foregoing deposition and hereby affix my signature that same is true and correct except as noted herein.		
16	_____		
17	_____		
18	_____		
19	TIM ROBINSON CA# 05-11639 NG		
20	STATE OF TEXAS)		
21	Subscribed and sworn to before me by the said witness, TIM ROBINSON, on this the _____ day of _____, 2005.		
22	_____		
23	_____		
24	NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS		
25	My Commission Expires: _____		

1 STATE OF TEXAS)

2 I, Brandy Paliotta, a Certified Shorthand Reporter in
3 and for the State of Texas, do hereby certify that,
4 pursuant to the agreement hereinbefore set forth, there
5 came before me on the 15th day of November, A.D., 2005, at
6 9:03 a.m., at the offices of Hughes & Luce, located at 1717
7 Main Street, Suite 2800, in the City of Dallas, State of
8 Texas, the following named person, to wit: TIM ROBINSON,
9 who was by me duly cautioned and sworn to testify the
10 truth, the whole truth and nothing but the truth, of his
11 knowledge touching and concerning the matters in
12 controversy in this cause; and that he was thereupon
13 carefully examined upon his oath, and his examination was
14 reduced to writing under my supervision; that the
15 deposition is a true record of the testimony given by the
16 witness, same to be sworn to and subscribed by said witness
17 before any Notary Public, pursuant to the agreement of the
18 parties; and that the amount of time used by each party at
19 the deposition is as follows:

20 Mr. Schwartz - 7 hours, 0 minutes,

21 Mr. Ryan - 0 hours, 0 minutes.

22 I further certify that I am neither attorney or
23 counsel for, nor related to or employed by, any of the
24 parties to the action in which this deposition is taken,
25 and further that I am not a relative or employee of any

1 attorney or counsel employed by the parties hereto, or
2 financially interested in the action.

3 I further certify that, before completion of the
4 deposition, the Deponent _____, and/or the
5 Plaintiff/Defendant _____, did X did not _____ request
6 to review the transcript.

7 In witness whereof, I have hereunto set my hand and
8 affixed my seal this 30th day of November, A.D.,
9 2005.

10
11

Brandy Paliotta

BRANDY PALIOTTA, CSR

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Esquire Deposition Services

Firm Registration No. 286

1700 Pacific Avenue, Suite 4750
Dallas, Texas 75202

Cert. No. 7211

Cert. Expires: 12/31/06

(214) 257-1436

Taxable Cost: \$ _____

ROBINSON DEPOSITION
EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IRACING.COM MOTORSPORT SIMULATIONS,
LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TIM ROBINSON, individually and d/b/a www.ow-racing.com, www.torn8alley.com and www.First-Racing-Sucks.com

Defendant.

X

Civil Action No.

05-11639 NG

SECOND REQUESTS
FOR PRODUCTION OF
DOCUMENTS TO
DEFENDANT
TIM ROBINSON

X

Pursuant to Fed. R. Civ. P. 34 and in accord with the definitions and instructions that follow these requests, iRacing.com Motorsport Simulations, LLC ("iRacing") requests that, within 30 days after service of these requests for production, you produce all responsive, non-privileged documents in your possession, custody or control for inspection and copying at Petrie Schwartz LLP, 500 Boylston Street, Suite 1860, Boston, Massachusetts 02116.

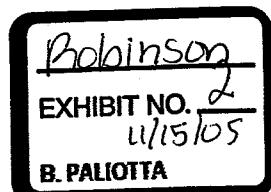
DOCUMENTS REQUESTED

Request No. 2:

Produce each and every document discussing, referring or relating to NASCAR® 2003, including any modifications, transformative works or derivative works thereof.

Request No. 3:

Produce each and every document discussing, referring or relating to any hex editing tools or other reverse engineering tools you used with respect to



NASCAR® 2003.

Request No. 4:

Produce each and every document discussing, referring or relating to the End User License Agreement ("EULA") for NASCAR® 2003.

Request No. 5:

Produce each and every document discussing, referring or relating to the applications called "owr2k5_v1.0.0.1.zip" and "owsc_nocd_temp.zip."

Request No. 6:

Produce each and every document discussing, referring or relating to any and all downloads offered on www.ow-racing.com, www.torn8oalley.com, and/or www.first-racing-sucks.com, which downloads: (a) derive from, transform or otherwise modify NASCAR® 2003 source code; or (b) defeat NASCAR® 2003's copy protection.

Request No. 7:

Produce each and every document discussing, referring or relating to the beta version of racing software that: (a) iRacing was developing but had not yet released; and (b) you tested pursuant to the terms and conditions of the Confidential Disclosure Agreement.

Request No. 8:

Produce each and every document discussing, referring or relating to any communication between you and iRacing.

Request No. 9:

Produce each and every document you identified in your responses to the First

Interrogatories that iRacing served on you contemporaneously with these Requests for the Production of Documents.

Request No. 10:

Produce each and every document to which you referred in formulating your responses to the First Interrogatories that IPC served on you contemporaneously with these Requests for the Production of Documents.

DEFINITIONS AND INSTRUCTIONS

1. iRacing incorporates by reference the Uniform Definitions In Discovery Requests contained in Local Rule 26.5. The meaning of all non-defined terms shall be in accordance with their ordinary and accepted usage.
2. In addition, "document" means all software programs, electronic data files, including word processing documents, spreadsheets, database files, charts, drafts, outlines, e-mail, PIF files, batch files, source code, object code, executable files, configuration files and deleted files. "Document" also means all other electronic data stored on computer memories, hard disks, floppy disks, cd-rom, or any other method.
3. "iRacing" or "plaintiff" means plaintiff iRacing.com Motorsport Simulations, LLC and its officers, directors, agents, representatives, employees, predecessors and assigns.
4. "NASCAR® 2003" means the NASCAR® Series 2003 Season computer software program and any transformative or derivative works thereof.
5. "Robinson", "you" and/or "your" means defendant Tim Robinson and his agents, representatives, employees, assigns and registered domain names, including

www.ow-racing.com, www.torn8alley.com, and www.first-racing-sucks.com.

6. If you object to any request contained herein, for each item or category to which you object:

- (a) State the specific ground for each objection;
- (b) Identify each such document by giving its date, the name of each author (and each addresser, if different), the name of each addressee (and each recipient, if different) and by giving any other information necessary to identify such document or part thereof; and
- (c) Provide a description of the subject matter of each document or item.

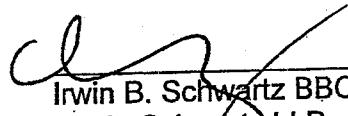
7. These requests for production of documents are continuing, and to the extent that you or your counsel subsequently acquire documents that would supplement your responses to these requests, iRacing requests that you timely serve supplemental responses to these requests and produce all responsive documents.

DATED: September 23, 2005

Respectfully submitted,

iRacing.com Motorsport Simulations, LLC

By its attorneys,

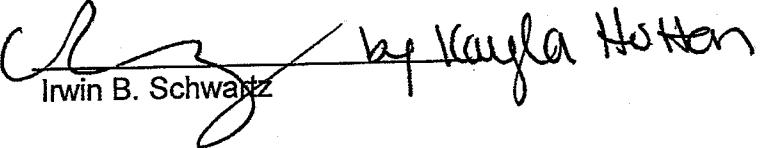
 *by Kayla Hotten*
Irwin B. Schwartz BBO #548763
Petrie Schwartz LLP
500 Boylston Street, Suite 1860
Boston, Massachusetts 02116
(617) 421-1800
(617) 421-1810 (fax)

Certificate of Service

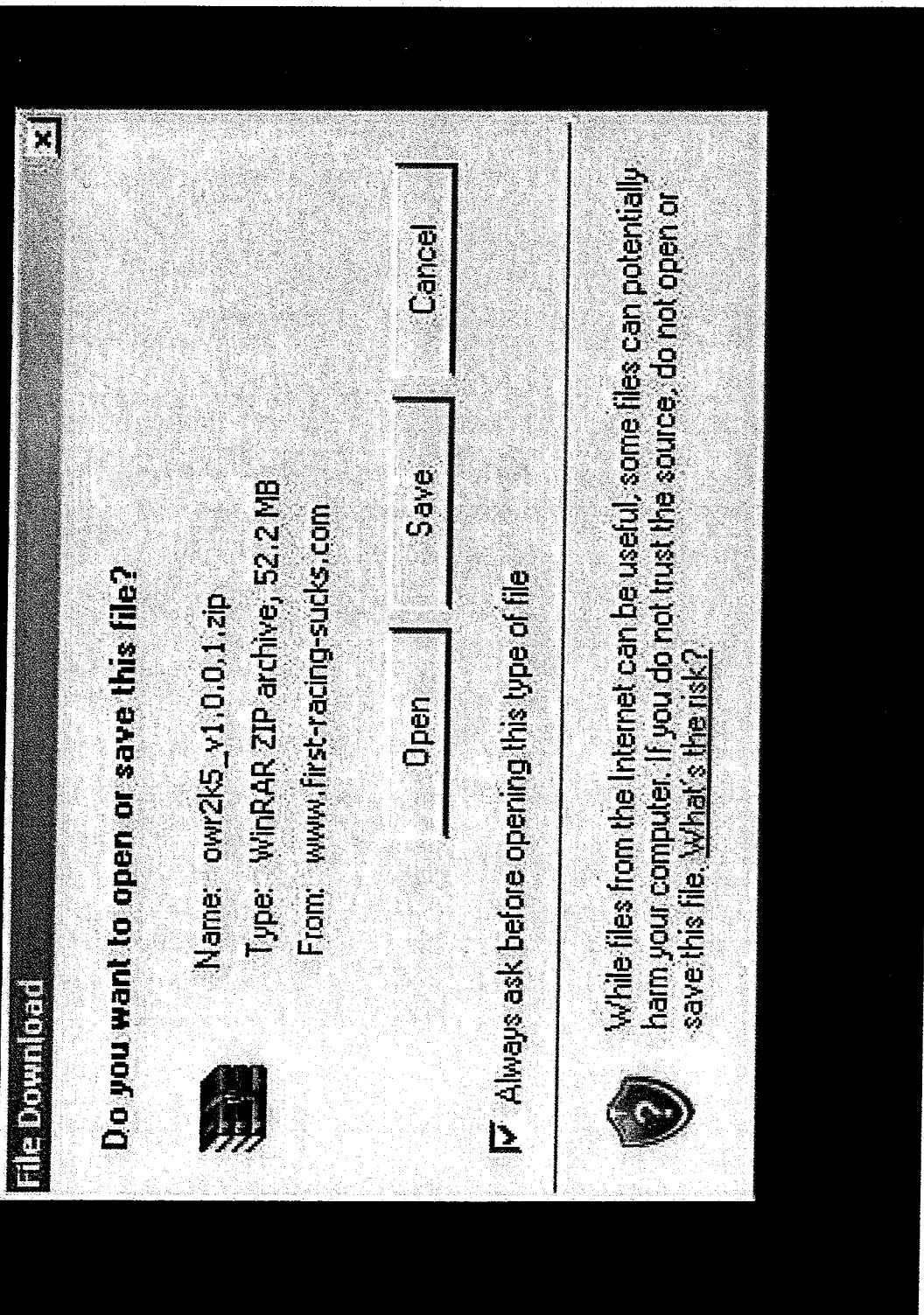
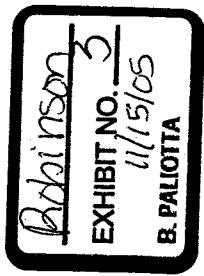
I, Irwin B. Schwartz, attorney for Plaintiff, iRacing.com Motorsport Simulations, LLC, hereby certify that on this 23d day of September, 2005, I served a copy of the foregoing document on Defendant by delivering the same, via United States mail, postage prepaid to:

Joseph F. Ryan
Lyne Woodworth & Evarts LLP
600 Atlantic Avenue, Boston
MA 02210

Counsel for Defendant Tim Robinson.


Irwin B. Schwartz

ROBINSON DEPOSITION
EXHIBIT 3



ROBINSON DEPOSITION
EXHIBIT 4

Torn80Alley.com

Any Closer and You Will Get Hurt!

Give a SHOUT DUTH!

Rayser34: server is up
see Yail round 6
31-Jul-2005 21:05:13
JMONTY: can't get
butibamba to come up
in gtp mod what i'm
doing wrong HELP
JMONTY: count me in
rick
31-Jul-2005 19:39:24

Shout History

Only Registered Users can
Shout
Create/Login

Torn80Alley.com

- Home - News
- Contact Us
- Content
- Download Area
- Driver Application
- Driver Bios
- FAQ - Help
- Forums
- Groups
- League Car Upload
- League Cars
- League Info
- League Rules
- League Standings
- Members List
- Motorsports News
- Private Messages
- Search
- Setup Guide
- Shoutblock

Supercell 23 Weekly Race Recap

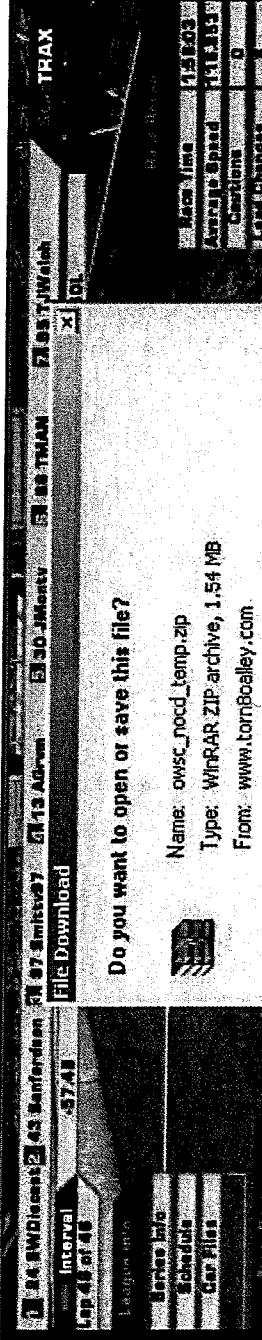


EXHIBIT NO.
Robinson 11/5/05-8
B. PALIOTTA

Filed 08/11/2005

Latest Forum Acti
Last 10 Forum

Donations!
Your donations are
appreciated! An
Torn80Alley.com is
to expand and p
quality supp

PayPal
DONATE

Motorsport News

Scott scholarship!
Busch driver signs
Actor Haysbert na

Race
9 of 15

Torn80Alley.com

1. Win an on-line mechanical training, 2. Win a DVD Broadcast
to compete in the 2006 Torn80Alley.com

ROBINSON DEPOSITION
EXHIBIT 5

File Edit View Favorites Tools Help

Back

Address http://www.owracing.com/

OWRacing.com

Open Wheel Racing

Welcome to OWRacing.com

OWRacing Home

Calendar

OWRacing Home

Home - News
Contact Us
Content
Download Area
Forums
Members List
Motorsports News
Paint Skin Upload
Private Messages
Recommend Us
Search
Statistics
Surveys
Links
Your Account

Recent Forum Posts

Last post by brownhot
OWR Mod Updates on 2005 at 26:16:27

Preview of mod batch of 2005 IR...
Last post by pikkie1
Mod Updates on 2005 at 16:14:05

Any word on a...
scene?

Last post by brownhot
Mod Updates on 2005 at 01:41:29

Question about...

Donations!

Your donations are...
appreciated, and he
Racing.com can...
expand and provide
support.

File Download

Do you want to open or save this file?

Name: owr245_v1.0.0.1.zip
Type: WinRAR ZIP archive, 52.2 MB
From: www.owracing.com

Open Save Cancel

Open Always ask before opening this type of file

While files from the Internet can be useful, some files can potentially harm your computer. If you do not trust the source, do not open or save this file. What's the risk?

Open Season

500

Bob Johnson
EXHIBIT NO. 5
1/15/05
B. PALIOTTA

PayPal
DONATE

Page 19 of 20

NASCAR News

• URL lines have been...
• Bell to stand in for...
• Manning: Shocked,
• Wheldon: defend...
• Franchitti aiming to...

Passion brews as St...
• Manning to make a...

User Info

Welcome Anonymous

Login

Nickname
Password
(Register)

ROBINSON DEPOSITION
EXHIBIT 6

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

iRACING.COM MOTORSPORT SIMULATIONS LLC,)
a Delaware Limited Liability Company, Plaintiff)
)
V.) Civil Action No.
) 05-11639 NG
TIM ROBINSON, individually and d/b/a)
www.ow-racing.com and www.torn8alley.com.)
Defendant)

DEFENDANT TIM ROBINSON'S ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES

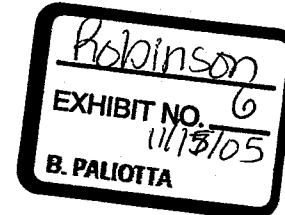
Interrogatory No. 1: Identify all applications you have created or participated in creating, which applications: (a) derive from, transform or otherwise modify NASCAR® 2003 source code; or (b) defeat NASCAR® 2003's copy protection.

Answer: I do not have access to any source code associated with NASCAR®2003, therefore I have not created or participated in creating any applications which (a) derive from, transform or otherwise modify NASCAR®2003 source code or (b) defeat NASCAR®2003's copy protection.

Interrogatory No. 2: Identify all applications you have used that: (a) derive from, transform or otherwise modify NASCAR® 2003 source code; or (b) defeat NASCAR® 2003's copy protection

Answer: I do not have access to any source code associated with NASCAR®2003, and I am not aware of any applications that I use or have used that (a) derive from, transform or otherwise modify NASCAR®2003 source code or (b) defeat NASCAR®2003's copy protection.

Interrogatory No. 3: Identify each and every person who participated in the creation of the NASCAR® 2003 Modifications, and, for each such person, identify the manner in which they participated.



Answer: According to ¶ 6 of Definitions and Instructions, this answer would be "Not Applicable."

Interrogatory No. 4: Identify each and every person who participated in the distribution of the NASCAR® 2003 Modifications, and, for each person, identify the manner in which they participated.

Answer: According to ¶ 6 of Definitions and Instructions, this answer would be "Not Applicable."

Interrogatory No. 5: Identify any hex editing tools or other reverse engineering tools used in the creation of the NASCAR® 2003 Modifications and the source(s) from which each such tool was obtained.

Answer: I currently use a program named Ultra Edit for hex editing when the need arises. I purchased my copy of Ultra Edit from www.ultraedit.com.

Interrogatory No. 6: Identify all websites or domain names through which you have offered the NASCAR® 2003 Modifications for download.

Answer: As previously noted, www.ow-racing.com, and www.torn&alley.com are the only two websites where NASCAR®2003 mods, namely the OWSC Sprint Car Mod and OWR05 Mod were made available.

Interrogatory No. 7: For each website you identified in response to Interrogatory No. 6, identify all persons who contribute or have contributed to its content or existence, including, but not limited to, its owners, administrators and contributing members. For each such person, identify: (a) his or her particular role(s) with respect to each website; (b) the privileges that person has on each website to which he or she contributes.

Answer: I am solely responsible for the existence of the two previously mentioned websites. I am also solely responsible for the downloadable content of each of the mentioned websites. Registered members also contribute to the content by posting/replying to topics in the discussion

forums. A list of registered members is can be found at each of the following links respectively, http://tom8oalley.com/index.php?name=Members_List and http://www.ow-racing.com/index.php?name=Members_List

As it relates to www.tom8oalley.com, there is one additional discussion forum administrator, username T-Man66. He only has access to discussion forums, and is also responsible for the FAQ portion of that website.

As it relates to www.ow-racing.com, there are three additional discussion forum administrators, usernames MaxTone, TMan66, and JoeB. They are limited to discussion forum administration privileges only.

Interrogatory No. 8: Identify all persons who are wholly or partially responsible for posting the NASCAR® 2003 Modifications for download on any of the websites you identified in response to Interrogatory No. 6.

Answer: I am solely responsible for the downloadable content on the two previously mentioned websites.

Interrogatory No. 9: Identify all persons who are wholly or partially responsible for hyperlinking to the NASCAR® 2003 Modifications (or to websites that offer the NASCAR® 2003 Modifications for download) from any of the websites you identified in response to Interrogatory No. 6.

Answer: Hyperlinking to downloadable content, also known as leeching, on the two previously mentioned sites is not allowed. Hyperlinking to the front page of each site is allowed, and I am not specifically aware of how many or how few websites post a link to each website.

Interrogatory No. 10: Identify all persons you know who downloaded any of the NASCAR® 2003 Modifications.

Answer: I have no way of telling whom has downloaded what from either of the two websites mentioned.

Interrogatory No. 11: Identify all communications between you and iRacing.

Answer: Emails were exchanged on the following dates:

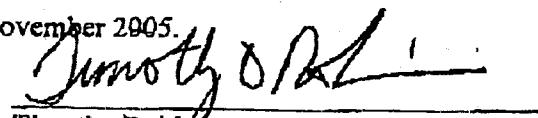
<u>2005 Date</u>	<u>From</u>
Mar 04	Steve Myers
Mar 04	Tim Robinson
Mar 07	Steve Myers
Mar 15	Steve Myers
Mar 18	Steve Myers
Apr 01	Bret Roubinek
Apr 08	Tim Robinson
Apr 11	Bret Roubinek
May 24	Tim Robinson
May 24	Bret Roubinek
Jun 02	Bret Roubinek
Jun 02	Tim Robinson
Jun 09	Tim Robinson
Jun 09	Bret Roubinek
Jun 10	Bret Roubinek
Jun 22	Tim Robinson
Jun 22	Bret Roubinek

I also had a couple of telephone calls with Brett Roubinek, VP of Marketing, but don't recall exactly what days those calls took place.

Interrogatory No. 12: Identify the person(s) who sent you Steve Myers' post from the FIRST beta forum, which post is attached to these Interrogatories as Exhibit A.

Answer: I do not know who that info came from, as it was from someone I do not even know, nor do I even remember the username used.. It came in the form of a Private Message on any one of a number of discussion forums that I subscribe to. More importantly, the information is not relevant to the question at hand. It is merely an attempt by iRacing.com to have me rat out one of their beta testers. I believe the information came from a user at Race Sim Central (forum.rscnet.org) but am not 100% positive. I have checked the discussion forums I regularly frequent, and have not found anything relevant.

The foregoing answers to interrogatories are made and given under the pains and penalties of perjury this 11/5 day of November 2005.



Timothy Robinson

ROBINSON DEPOSITION
EXHIBIT 7

ROBINSON DEPOSITION
EXHIBIT 8

ROBINSON DEPOSITION
EXHIBIT 9

REDACTED

Home * Join * The Driver * ? * ? * Tips & Tricks * Links * ?

Open Wheel Racing Mod for NR2003

By: Torn8oAlley.com and XRL/OW

**** IMPORTANT: Read the following BEFORE download and
install ****

Click the images above to enlarge

PLEASE READ AND UNDERSTAND BEFORE INSTALLING

NASCAR(r) Racing 2003 Season 1.1.0.2 - XRL/OW and
Torn8oAlley.com Open Wheel Racing (OWR) Mod v1

7/09/04

TABLE OF CONTENTS:

- [1] HOW TO INSTALL THE OWR MOD
- [2] RUNNING THE OWR MOD FOR THE FIRST TIME
- [3] FEATURES
- [4] KNOWN ISSUES
- [5] TROUBLE REPORTING
- [6] CREDITS

**NOTE 1: The OWR Mod will only work if you have previously
installed the Papyrus 1.1.0.2 Patch. The OWR mod is designed using
the PTA physics. There are 9 tracks included with this mod for the
OWR. Those tracks will all begin with the letters, OWR at the
beginning of them in the tracks drop down screen in game. More
tracks will be supplied as separate downloads on the XRL/OW site
(<http://xrl.home.comcast.net>) site and at Torn8oAlley.com**

**NOTE 2: Your NR2003 installation must have the default sound
folder, i.e. c:\Papyrus\NASCAR Racing 2003 Season\sound, before**

REDACTED

Robinson
EXHIBIT NO. 9
11/15/05
B. PALIOTTA

~~REDACTED~~

installing OWR and using the OW Sound Switcher.

[1] HOW TO INSTALL THE ADD-ON:

=====

The OWR mod is supplied as a self-extracting installation. If you previously installed your game using the default installation path of C:\Papyrus\NASCAR Racing 2003 Season, simply follow the instruction/prompts for installation. If your game installed in a different location, use the Browse button on this installer to locate your NASCAR Racing 2003 folder and install to there.

[2] RUNNING THE OWR ADD-ON FOR THE FIRST TIME:

=====

You will notice 2 arrow buttons at the bottom of the main menu with the phrase "Active Series" to the left of the arrow buttons. Use the buttons to select "Open Wheel Racing" select a car in the Player Info, and have fun.

[3] FEATURES:

=====

A: Paint schemes for 23 drivers and teams for the OWR 2004 season have been included.

B: Setups have been included for both simulation as well as arcade mode. The OWR setups are based on the PTA Physics. The OWR setups included have been designed to provide a unique 'softer' and less powerful feel. The setups are also balanced in accordance with the AI.

C: The OWR mod includes a sound switching utility. By double clicking the "OW Sound Switcher" icon (on desktop) after installation, the switcher will rename your original sounds folder to sound_NASCAR, and the sound_ow folder will be renamed to sound. When you are finished with the OWR mod and want to switch back to your original NR2003 sounds, simply double click the icon and everything will be returned back to it's normal configuration.

[4] KNOWN ISSUES:

=====

A: PAINTING YOUR OWN CAR The OWR cars can not be painted using the in-game paint booth. You must use a 3rd party application, such as Paint Shop Pro or Photoshop. The supplied templates work in both applications. Once you have painted your car with either PSP or Photoshop, simply import the new car using the Opponent Manager, much like you would with a normal Cup, GNS, CTS, or any other mod car. If you are not familiar with

~~REDACTED~~

REDACTED

painting/importing/exporting cars, there are plenty of people willing to help on several sim racing sites such as the PWF forums, or The US Pits.

B: USING OWR MOD AT NON OWR TRACKS

The OWR Mod is based on the PTA physics. In conjunction with that, the track.ini files for each OWR track has been modified so that the mod exhibits greater speed and grip at those tracks. If you wish to race the OWR Mod at a track other than OWR supported you will need to modify certain settings within the specific track.ini file. If you choose to modify any settings in any track.ini file, we STRONGLY suggest you make a backup copy of that file before making any changes. We suggest that you take a close look at an existing OWR track.ini files as a general guide to values that should work. To modify the track.ini file, open the file in any text editing program. Scroll down until you find the following statement:

track_asphalt_grip = X.XX ; > 1.0 means more grip. This shouldn't have to change by more than +- 0.05

where X.XX is a numerical value. By increasing the value stated in the track.ini, you will attain the necessary performance consistent with the OWR Mod. Values can range widely from one track to another. You will need to test the results of the values you use. In addition, you will need to make adjustments for tire heat build-up. In this case, look for the following statement:

track_tire_heat = 1.08 ; > modifies amount of heat going into the tire at a given track.

In almost all cases, you will want to lower the value. Make note of your tire temps during testing of the new grip value. It is suggested you aim for a tire temperature of approximately 210 degrees at 70 degrees track temperature with the new grip value combined with the new heat value.

You may also wish to edit the tire wear values as well. Again, look for the following statements:

track_tire_wear = 0.51 ; > 1.0 means more wear, i.e. 2.0 is twice normal wear, 0.5 is half normal wear

track_tire_wear_loss = 0.29 ; percentage of grip lost at full tire wear

It is strongly recommended that any changes you consider making to these values be done after using a complete tank of gas. You will need to experiment with values that will cause tire wear to coincide with fuel consumption. In all cases, any changes to track.ini files are done at your own risk. Do not contact us for the original

REDACTED

~~REDACTED~~

track.ini files in the event of errors.

C: It is recommended that you create a separate Player for this mod.

[5] TROUBLE REPORTING:

=====

Torn8oAlley.com and eXtreme Racing League (www.fzeri.com/xrl), (www.xrl.home.comcast.net) are not supported by or affiliated with Vivendi Universal Games, Sierra Online, or Papyrus Racing Games so please do not call or email the above for technical support with OWR Mod issues. You may use the support forums at torn8oalley.com. Direct link: <http://torn8oalley.com/cgi-bin/yabb/YaBB.pl>

[6] CREDITS:

=====

{Development Team}

**Joe Barlow
Glen Cambell
Rob Peterson
David Kesterson
Kerm Fehlhaber**

{Beta Testers}

**Joe Barlow
Sam Barlow
Francesco Zeri
Glen Campbell
Rob Peterson
David Kesterson
Tim Robinson
Tony Gentile
Todd Diessner
Raymond Haynes
Jimmy Monteiro
John Radford
Teddy Welch
Bernie Dessoye
Andrew Smith
Robert Cope
Gary Antel
Rich Leyer
Tommy Owings**

**Torn8oAlley.com -
<http://www.Torn8oAlley.com>
Contact E-Mail: theboard@Torn8oAlley.com**

~~REDACTED~~

REDACTED**eXtreme Racing League -****www.fzeri.com/xrl****<http://xrl.home.comcast.net>****Contact E-Mail: xrl@comcast.net**

Special thanks to the members of the EDITING forum at TheUSPits.com. Without their assistance, this would not be possible.

Thanks to Klaus Horbrand for WINMIP tools. Get WINMIP2 at <http://www.horbra.de/winmip/>

Thanks to Fred "White Falcon" Anderson and Don "AxaptaCoder" Price, and The US Pits for the CarViewer utility TheUSPits.com.

Open Wheel Racing (OWR) Mod Files

These are Mod .exe files.

It is recommended that you only install the Hi-Res if you have a very fast computer and getting great framerates (fps)

FILE NAME	BY:	WEBSITE	FILE SIZE	DOWNLOAD
Low Res 512 X 512	Torn8oAlley.com / xrl.home.comcast.net	Torn8oAlley.com	14.8 Megs	Torn8oAlley.com
High Res 1024 X 1024	Torn8oAlley.com / xrl.home.comcast.net	Torn8oAlley.com	31 Megs	Torn8oAlley.com
Low Res 512 X 512	Torn8oAlley.com / xrl.home.comcast.net	Torn8oAlley.com	14.8 Megs	http://xrl.home.comcast.net/
High Res 1024 X 1024	Torn8oAlley.com / xrl.home.comcast.net	Torn8oAlley.com	31 Megs	http://xrl.home.comcast.net/

REDACTED

REDACTED

Open Wheel Racing (OWR) Graphics / Painting

*These are zip files. Just download and unzip to a folder of your choice.

FILE NAME	BY:	WEBSITE	FILE SIZE	DOWNLOAD
Templates PSP	Torn8oAlley.com / xrl.home.comcast.net	Torn8oAlley.com	789 KB	Download Here
Templates PSD	Torn8oAlley.com / xrl.home.comcast.net	Torn8oAlley.com	881 KB	Download Here
Car Viewer	Torn8oAlley.com / xrl.home.comcast.net	Torn8oAlley.com	831 KB	Download Here
Black Gauges	Torn8oAlley.com / xrl.home.comcast.net	Torn8oAlley.com	100 KB	Download Here

Open Wheel Racing (OWR) Tracks Coming soon

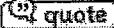
REDACTED

ROBINSON DEPOSITION
EXHIBIT 10

TRobinson
Spark Plug

Joined: 19 Mar 2005
Posts: 27
Location: TX

Posted: Sat Mar 19, 2005 8:09 pm Post subject:

 quote

If you read and interpret what little they have posted around about what they will be providing it will be an online only, pay-to-play system.

In fact, if I were the wagering type, I would bet that it won't even be a retail package available in stores, it will be completely downloadable.

In a Gamespot interview, sometime last year, the so-called Legend, Dave Kaemmer said,

Quote:

We are putting together a global Web site that will be a central place for anyone interested in racing and driving--from beginners, who need some initial instruction in a racing school, up to professional race drivers who would like the opportunity to get track time at a low cost. In addition to providing a simulator and training, we will be sanctioning online race series at all levels--from 140 hp Formula Fords up to 800 hp champ cars, with everything in between--and in many types of cars, including formula, sports car, stock car, even off-road cars.

Link to the entire article.

Notice the "global website," mention of "low cost" and "sanctioning online race series."

That tells me a lot, but I suppose nobody really knows except themselves what their plan really is.

In my mind it's irrelevant anyway, and that is why I continue down the path of being able to release the updated OWR05 mod, and to continue work on the OWSC mod primarily.

They don't currently have a product available, so anything we do at OW-Racing, clearly is not competing with them. I suspect their claim would be that it will dilute whatever they are currently working on. Maybe, but since they have nothing released other than in beta form, that claim is hard to substantiate anyway. To even be a beta tester, you have to own a copy of NR2003, so whatever it might be is nothing but modified NR2003 code.

We don't charge for anything we do, so we can hardly be accused of affecting them financially. I maintain, in fact, that we are helping them because people are once again buying remaining copies of the game. In case you hadn't noticed, 6 weeks ago, NR2003 was selling on the aftermarket places like eBay and Amazon for as low as \$9.99. It is currently selling for nearly \$80. Not bad for a game whose MSRP as \$49.99 originally. One can only assume they receive some sort of royalties, or direct income from the sales of remaining copies of the game. I mean after all, they apparently own it!

Their entire position boils down to them not wanting people to modify the .exe or provide any method, utility or means for people to do that. Well it is completely legal for you or me to reverse engineer, or otherwise disassemble code. It has been proven time and again in the courts.

They claim to have bought the rights to the source and object code, but have yet to prove that, at least to me. I have asked for that proof on a couple of occasions, but have seen nothing as of yet. I suspect I won't either, but that is a different story.

They allegedly bought the rights knowing full well, for over a year, that multiple modified exe's existed including the F-330 mod, TC physics, no_cd.exe's, etc. among others. To jump up now and claim that "their property" is being infringed upon, is nothing short of disengenuous.

Additionally, to be labelled a "hacker" and "thief" does not sit well with me at all.

Enough of my ramblings for now, and kudos to whoever came up with this site. It is the perfect example of free speech, and hopefully will show the power of that speech.

trc

Robinson
EXHIBIT NO. 10
11/15/05
B. PALIOTTA

My name is Tim, and I am a simoholic!

TRobinson
Spark Plug

[Posted: Sun Mar 20, 2005 11:11 pm](#) Post subject:

 [quote](#)

Joined: 19 Mar 2005
Posts: 27
Location: TX

TieRodTurner wrote:

Why did 1st all allow Redline to go ahead and release the GTP mod when all other mods seem so to have been put on hold?

TRT

I would speculate, but rather not, since I am the one involved with FIRST as relates to mods hosted on OW-Racing.com

I will keep everyone posted however.

tks,

My name is Tim, and I am a simoholic!

TRobinson
Spark Plug

[Posted: Sun Mar 20, 2005 11:11 pm](#) Post subject:

 [quote](#)

Joined: 19 Mar 2005
Posts: 27
Location: TX

TieRodTurner wrote:

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I will keep everyone posted however.

tks,

My name is Tim, and I am a simoholic!

TRobinson
Spark Plug

[Posted: Mon Mar 21, 2005 10:07 am](#) Post subject:

 [quote](#)

Joined: 19 Mar 2005
Posts: 27
Location: TX

them so much , and this is what the site is for . Personally , I'm glad , so the facts can be on other boards for everyone to judge . This is just a place for bashing for guys that want something free .

Everything here is NOT speculation, and making things up. Pretty short sighted on your part. FIRST has released plenty of facts to know with high degree of certainty what they are doing. Some folks are even part of their beta, and no matter how hard they try with NDA's, info will still leak out, and has.

I also don't see this site as a place for bashing FIRST, rather a place to speak what you want to speak. PRO-FIRST or CON-FIRST, the posting rules say that. You did read that right?

Seems to me the rules said post what you want, either for or against, just don't use profanity. From what I have seen, that is exactly what has happened.

waitnsee wrote:

If you don't want to pay to p-play , who pays for your server ? I have to pay a server fee and a membership in my leagues . I guess I'm in the wrong leagues , or you guys are just freeloading off of me .

I think there is a partial point in there somewhere, but I am not freeloading off of you or anyone else.

waitnsee wrote:

I think the community is sick of speculation , and FIRST owes you no explanation , especially with stuff like this going on .If you are set against racing there , fine .Stay away . Just don't make stuff up , you look like an idiot when ya do .

I agree to a certain extent, speculation is not a good thing. FIRST may not owe me an explanation of their stance, but when they send me a C&D order without providing me proof of their claim, then they DO owe me something.

Once again, I am not making anything up, I am simply stating the facts as I know them, and if that makes me an idiot, then so be it.

tks,

My name is Tim, and I am a simoholic!

TRobinson
Spark Plug

Joined: 19 Mar 2005
Posts: 27
Location: TX

Posted: Mon Mar 21, 2005 11:37 am Post subject:

 quote

waitnsee wrote:

They certainly do .Have they not aswered you yet ? If they tell you to C&D , then you deserve a detailed explaination .

All they have said is they own the rights. My request was simple, please provide proof.

They have not yet provided me with proof of their claim.

I wait patiently, believe me

tks,

My name is Tim, and I am a simoholic!

TRobinson
Spark Plug

Posted: Mon Mar 21, 2005 1:48 pm Post subject:

 quote

Email from Steve Myers, VP of Operations.

Joined: 19 Mar 2005
Posts: 27
Location: TX

tks,

My name is Tim, and I am a simoholic!

TRobinson
Spark Plug

Posted: Fri Mar 25, 2005 2:53 am Post subject:

 quote

TEAM BONESPRING wrote:

after reading the legal documents, it doesn't seem premature to me at all

Joined: 19 Mar 2005
Posts: 27
Location: TX

kthxbye

Glad to see lawyers in here too!

tks,

My name is Tim, and I am a simoholic!

TRobinson
Spark Plug

Posted: Fri Mar 25, 2005 2:56 am Post subject:

 quote

TEAM BONESPRING wrote:

you do realize Tim is just a disgruntled ex-papyrus employee... GO FIRST GO FIRST GO FIRST

Joined: 19 Mar 2005
Posts: 27
Location: TX

Ex-Papyrus, yes.

Disgruntled, I doubt it.

Seems like you might be a little disgruntled yourself?? Did you not get the attention you deserved as a child?

tks,

My name is Tim, and I am a simoholic!

TRobinson
Spark Plug

Posted: Sun Mar 27, 2005 8:23 pm Post subject:

 quote

waitnsee wrote:

They have explained their rational in the open letter .They don't want the code hacked and distributed .If you make a mod that's fine , just not a new game with altered physics

Joined: 19 Mar 2005
Posts: 27
Location: TX

The open letter literally accused people of being "hackers" and wanted people to rat each other out. It also came out long before a lot of C&D letters came out, or at least in my case it did. This, after I had tried unsuccessfully to contact folks there on numerous occasions. My initial thought, since they failed to respond, was they

aren't interested in anything we were doing, but I soon found out that wasn't the case. None of this, again, in my opinion, would not have happened, had the Redline guys published such an outstanding product. That is what made FIRST nervous, and frankly, sent them scrambling like they have been. They clearly, again, in my opinion, knew what was going on in the community, and did nothing to stop it for well over 6 months. Had they been overly concerned back in September, or for that matter in June, when PWF suddenly pulled everything from their site and FIRST was announced, I doubt we would be having these discussions right now.

Regardless, we are where we are, like it or not.

waitnsee wrote:

I personally think that's their right . If it is , I don't see how they are bad guys for protecting what's theirs.

I don't think I am saying anyone is a bad guy or not, I just think it is quite convenient to start claiming copyright infringement, and intellectual property violations when you have knowingly let things go on ad nauseum since June. I don't believe anyone just woke up one morning and suddenly realized that, "OMG, we're being violated!" (that is not meant to be funny, although it is I guess), I am simply trying to illustrate my point.

And then to put out a "celebratory" type of press release announcing you are filing suit against someone was incredulous to me. I said as much to the PR lady that was apparently responsible for the release. The uninformed would be led to believe that in the Battle.net or Accolade case, that it is all settled, and the courts ruled in favor of the plaintiffs. While they did initially, the case is still under appeal in a Federal Circuit court, and stands as much of a chance of being overturned as not. But the "spin doctoring" wouldn't let the average/casual reader know that, nor would I expect it to I suppose. My point, is that to be fair, it is sometimes necessary to do your own homework and then form your own opinion about the rationale supporting a particular decision, rather than simply believing the gospel as one person/organization spouts it.

I personally believe it will be hard for them to prove any "grave damage" has been done to their product. After all, it only exists in beta format, and isn't even available to the general public at this point. You can't project what damage is/has been done, when there is nothing concrete to compare it to.

waitnsee wrote:

As far as alienating the people that they need to buy their product , that just means the 100-200 **MAYBE** that are posting

I would guess that number is quite higher than what you have quoted, but it is really immaterial at this point.

waitnsee wrote:

why can't anyone give Dave a chance to give us an awsome SIM that is better than what we have ?

DK clearly knows the value of the modding community, which is one of the things that makes this a little more interesting, at least to me. GPL is still going strong as a result.

So if that business model, one which looks the other way while modding is happening, drives sales up and puts money in people's pockets, I ask what has changed? 6 weeks ago, NR2003 could be had on the secondary market for \$10. Today, you can't touch it for less than about \$70. Originally a \$50 game has gone up in value almost 50%! This after 2 full years has gone by. I dare say it is not so much because the Nextel Cup season just started recently either. More people than not, again, in my opinion, are/were buying it for the mods. Nothing more, nothing less.

I wonder out loud if the investors in FIRST had not been who they are if things

would have been slightly different. That is something they will have to determine and ultimately answer.

In any event, I think it is a very complex, interesting situation, that may well be settled in the courts, at which point everyone involved loses.

Speaking of court, I must go, and quit rambling, as I have my own day in court on Tuesday!!

tks,

My name is Tim, and I am a simoholic!

WheelMan

Spark Plug

Joined: 19 Mar 2005
Posts: 38

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TRobinson
Spark Plug

Joined: 19 Mar 2005
Posts: 27
Location: TX

TRobinson
Spark Plug

Joined: 19 Mar 2005
Posts: 27
Location: TX

[Posted: Mon Mar 28, 2005 10:36 am](#) Post subject: 

Already sent my \$100 for support. And yeah, it won't buy much, but gives me a good feeling that I backed up my words with support.

Not sure if you have been by Tim McArthurs site, but from what I read, looks like a lot of supporters have also contributed too.

Would be a shame tho if big money won out because the smaller guy could not get his argument processed through the courts because of being outspent. That isn't justice. Not by a long shot. Both sides deserve their day in court, in front of a judge.

FIRST has their opinion, Tim and his supporters have theirs. Play it out in court.

One side of the coin has equal value to the other. Let the judge decide which side should be face up in this case.

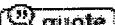
 

[Posted: Mon Mar 28, 2005 11:04 am](#) Post subject: 

I strongly doubt whether or not this actually makes it to court.

tks,

My name is Tim, and I am a simoholic!

[Posted: Thu Mar 31, 2005 12:04 pm](#) Post subject: 

You, sir, are a nit-wit!

I am not a member of The US Pits, and therefore don't care about them not being

a better position to negotiate with them.

I still have a right to pursue whatever avenue I choose, regardless of what you or anyone else thinks.

You see it doesn't bother me that you are in First's court, that is your right, your choice, whatever. I happen to have other opinions.

tks,

My name is Tim, and I am a simoholic!

TRobinson
Spark Plug

Joined: 19 Mar 2005
Posts: 27
Location: TX

[Posted: Mon Apr 25, 2005 11:02 am](#) Post subject: 

waltnsee wrote:

OWR looks like ATARI compared to what FIRST will put out . They don't need that . 

Ok, so you are a FIRST lackey/employee or whatever, I can live with that, but ATARI? Come on, give people a little bit of credit.

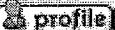
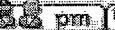
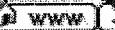
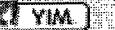
You have no idea what OWR05 looks like, drives like or anything, so before you knock it, and continue your FIRST worshiping, you should get a clue.

If you want to worship something that is not out yet, and even in beta, is nothing more than modified NR2003 physics, go ahead, but let's truly WAITNSEE what they put out when they put it out.

tks,

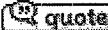
My name is Tim, and I am a simoholic!

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TMan66
Spark Plug

Joined: 14 Apr 2005
Posts: 72

[Posted: Mon Apr 25, 2005 1:07 pm](#) Post subject: 

Waltnsee, I expected a little more from you than the kind of comment comparing OWR to ATARI. Really, are you the kind of person who would willfully comment in such a manner that would insult the efforts of other people? Especially those who willingly put in untold hours to produce something for others to use without asking for compensation, never mind the question of legalities.

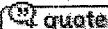
I could ask you about what you have created, whether it be a mod, track or a paint job and see if you would be willing to hold it to public scrutiny, anonymous to boot as you have not shared your real name while publicly criticizing others work. My work is available on a couple of sites for you or anyone to critique.

We can accept the criticizm at OW-Racing as long as it is constructive and attributable. If not, then to me those kinds of comments represent immaturity and a lack of moral ethic.

Tony "TMan" Gentile
OW-Racing.com
Torn8oAlley.com

TMan66
OW-Racing.com
Torn8oAlley.com

TMcArthur
Spark Plug

[Posted: Wed Jun 01, 2005 2:12 pm](#) Post subject: 

Joined: 05 Apr 2005
Posts: 47

From what I read of it, DK is saying that any mods (be it tracks, cars, etc) are "ok" as long as you get (read "pay for") a license from them to do so. When you have a license you can mod, and only distribute approved files from their site. Those files will be purchased for download the modder will get royalties on each purchase of the mod. Of course it would only be logical to assume that they too will get a cut of that sale.

Seems to me that they want to make sure *all* mods will have to go through them so they can get a few more bucks in licensing and royalties. He isn't backing out on his word "modding is ok" but only through them, approved by them, and if you pay to have the rights to mod.

Brilliant idea (though far from original) if we lived in a communist state.

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[profile](#) [3:43 pm](#)

waitnsee
Motor Man

Joined: 21 Mar 2005
Posts: 113

[Post](#) [Wed Jun 01, 2005 2:24 pm](#) Post subject:

[quote](#)

I'd like to see something "official"

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[profile](#) [3:43 pm](#)

nr2003_editor
Lugnut

Joined: 21 Mar 2005
Posts: 20

[Post](#) [Wed Jun 01, 2005 3:46 pm](#) Post subject:

[quote](#)

Well, since the last time I've visited, I've decided to say "screw FIR\$T" ...and welcome rFactor.

I haven't been contacted by him yet, thank god.

Then...I'll keep on doing tracks, mods...etc. (No exe stuff)

Did I mention...FIRST SUCKS!!! 😂

aka StrtRacrZ, founder/operator of team 78 racing

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[profile](#) [3:54 pm](#) [email](#)

TMan66
Spark Plug

Joined: 14 Apr 2005
Posts: 72

[Post](#) [Wed Jun 01, 2005 3:54 pm](#) Post subject:

[quote](#)

I specifically emailed Sydney Rubin (First's PR maven) from my personal email account following the announcement of the agreement between Tim and First.

I asked her in plain english about whether or not I could create my own track, host and distribute it from my own personal web site. She has yet to respond. Guess I will email her and First again.

As far as I am concerned, if I design and build a track using Sandbox, I will damn well distribute it unilaterally. I do not need First to tell me what I can and cannot do. In fact, if they want to come up to chilly Canada to deal with me legally, let them.

You know what is next don't you? I am willing to wager that Kaemer and Henry will soon go after the private servers, the people we directly connect to. It would not surprise me in the least.

TMan66
OW-Racing.com
Torn80Alley.com

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BuckarooBanzai
Lugnut

[Posted: Wed Jun 01, 2005 5:29 pm](#) Post subject:

[quote](#)

Sandbox is the key to this issue. Papyrus freely distributed their tool for track making, with no stipulation about distribution of tracks made with the tool. This is like trying to enforce a copyright you don't own. Oh, wait, Kraemer did that, too.

Joined: 25 Mar 2005
Posts: 2

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TRobinson
Spark Plug

[Posted: Thu Jun 02, 2005 5:43 am](#) Post subject:

[quote](#)

Tim,

Can you point me in the direction of where this is posted, or in the case of emails being sent, do you have an example you can forward to me?

tks,

My name is Tim, and I am a simoholic!

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TMcArthur
Spark Plug

[Posted: Thu Jun 02, 2005 10:51 am](#) Post subject:

[quote](#)

Not publicly posted anywhere.

I dont feel it would be appropriate to post or forward private emails without the recipient's approvals, in which I will ask for.

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waitnsee
Motor Man

[Posted: Thu Jun 02, 2005 11:12 am](#) Post subject:

[quote](#)

Everyone needs to put the stuff out in a rar file on emule or bearshare . I have evrything from 2003 , including the 2005 mod on there . It's not hard to get it , really . That way , they couldn't stop it .

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TRobinson
Spark Plug

[Posted: Thu Jun 02, 2005 7:15 pm](#) Post subject:

[quote](#)

I understand Tim.

I will look for an email, should you get approval from the other party.

tks,

Please email to swdiecast AT ow-racing DOT com

Joined: 19 Mar 2005
Posts: 27
Location: TX

tks,

My name is Tim, and I am a simoholic!

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Spark Plug

Joined: 14 Apr 2005
Posts: 72

Posted: Sat Jun 04, 2005 9:27 am Post subject:

[quote](#)

And I have a sneaking suspicion that First knows damn well that they mishandled this.

John Henry's 'Razorback' debacle is a prime example. If this is his management style, it is surprising that they won the World Series.

TMan66
OW-Racing.com
Torn8oAlley.com

[profile](#) [pm](#) [email](#) [www](#)

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Meanrabbit
Lugnut

Joined: 03 Jun 2005
Posts: 3

Posted: Sat Jun 04, 2005 4:45 pm Post subject:

[quote](#)

I think they could have worked with the mod maker(s) and had them put a small 'bug' or branding saying the original code belonged to "X" or required the mod guys to make a splash screen or something. Have the mod maker sign an agreement not to profit off the materials they make or something like that.

It didn't have to be done this way.. Doing it this way is just going to push all us 'old-timers' away from anything they put out down the road.. good product or not. No need to threaten the fans with lawyers.

For their sake and the capital investors, they better hope whiny old guys like me are the minority.

Ed

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TMcArthur
Spark Plug

Joined: 05 Apr 2005
Posts: 47

Posted: Sat Jun 04, 2005 11:37 pm Post subject:

[quote](#)

Meanrabbit wrote:

For their sake and the capital investors, they better hope whiny old guys like me are the minority.

The RSC poll showed roughly 70% of the 300+ voters did NOT support First and over 45% refuse to purchase their new product because of it. A small sampling of people, but the percentages would stay near the same if it were 300 or 3 thousand.

If the percentages stay the same with a 10,000 count customer base (and I'm sure they are betting on a larger customer base than 10k)... 4500 non-paying customers times \$15 per month, equals \$67,500 per month or \$800,000k per year that they just possibly lost to protect their copyrights.

Hell, if only 500 of us don't give them the \$15 a month, then they lost out on 100k a year.

hmmmm, they may actually be the "first" company that will *protect* themselves into extinction.

[Back to top](#)[profile](#) [8:51 pm](#)**JonC**
Lugnut [Posted: Sun Jun 05, 2005 2:58 am](#) Post subject:[quote](#)Joined: 02 Jun 2005
Posts: 9

I was a beta tester around the time this all kicked off, their closed forums were interesting as people got peaved with their attitude, said so and left, me included. In the circles I race in I know of only one person to show any support for First, and he can't justify their actions with regards to copyright, he just says he likes the idea! All of this added to the fact that the demand for a hardcore simulation is nowhere near the demand for the arcade racers like need for speed, TOCA race driver, I'm not sure where First are going to find customers. Time will tell!!

[Back to top](#)[profile](#) [8:51 pm](#)**TMan66**
Spark Plug [Posted: Sun Jun 05, 2005 9:05 am](#) Post subject:[quote](#)Joined: 14 Apr 2005
Posts: 72

I agree Jon, I dont think the numbers are there to support a pay to play based on the generation of sim we have in front of us now.

However, lets be honest here the numbers could change IF First was to truly present something that is new, and next generation. But because they have been so silent, who knows what the hell they have cooking.

You were a beta tester at First? Obviously you are committed to the non disclosure, so I won't even ask the obvious. But you would be in a good position to know for yourself about the prospects.

I think you are right in that it will be the hard core/dedicated sim racer that will be the ultimate customer base. Trying to sell a pay to play to those guys when they can race for free elsewhere or for little cost through direct connect will be a chore.

Honest and truly, First is better off to package this thing of theirs and sell it on the shelf.

TMan66
OW-Racing.com
Torn80Alley.com[Back to top](#)[profile](#) [8:51 pm](#) [email](#) [www](#)**JonC**
Lugnut [Posted: Sun Jun 05, 2005 9:22 am](#) Post subject:[quote](#)Joined: 02 Jun 2005
Posts: 9

Yeah, I am bound by a NDA, and no, I'm not willing to break it in the current climate. What I will say is that I did not find their plans revolutionary, although very interesting and showing a lot of promise. I just find their attitude to be bad, and I really don't think the customers are out there for them, especially having upset such a large portion of the sim racing community.

[Back to top](#)[profile](#) [8:51 pm](#)**TMcArthur**
Spark Plug [Posted: Sun Jun 05, 2005 1:20 pm](#) Post subject:[quote](#)Joined: 05 Apr 2005
Posts: 47**JonC wrote:**

I was a beta tester around the time this all kicked off, their closed forums were interesting as people got peaved with their attitude, said so and left, me included.

Yea I have been hearing this as well... From what I have heard their supposed 500+ testers was really a lot less, and many (half-ish?) have either stopped participating or have out-right left them? Not all due to the what happened with me or the community, but also (more so?) due to the product not being anything new or different then what we currently have.

When all this started and papers were filed in Federal Court, I received a good amount of visitors to my site FROM the beta-first-racing.net forums. Though I don't have access to look at each thread, it seems to me that a lot of the testers were wanting to hear the other side of the story.

32,000 views on that thread and still counting 😊

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 [profile](#)  8:28 pm

JonC
Lugnut

Posted: Sun Jun 05, 2005 1:29 pm Post subject:

 [quote](#)

TMcArthur wrote:

Joined: 02 Jun 2005
Posts: 9

From what I have heard their supposed 500+ testers was really a lot less, and many (half-ish?) have either stopped participating or have out-right left them? Not all due to the what happened with me or the community, but also (more so?) due to the product not being anything new or different then what we currently have

I have been out of the project for a few months now, but at the time I left much of what you say rings true.

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 [profile](#)  8:28 pm

TRobinson
Spark Plug

Posted: Sun Jun 05, 2005 6:57 pm Post subject:

 [quote](#)

500+ beta testers was always a stretch in my mind.

When I quit the beta testing, there were about 15 regional teams, each with about 10 people on them. I know this, because I painted the cars for Team Texas initially.

That is a far cry from 500 although I suppose it could have grown after I left, which was at the beginning of the year.

Sad thing is I left before all this crap started. I wish I could've left because I got a C&D letter, which happened later! 😊

Their plans may be revolutionary, but while I was testing, it was nothing more than a modified .exe to drive a tricked up IROC car with very low HP in the "FPA" and "FPB" groups as they called them.

tks,

My name is Tim, and I am a simoholic!

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 [profile](#)  8:28 pm  [www](#)  [YIM](#)

waitnsee
Motor Man

Posted: Sun Jun 05, 2005 8:41 pm Post subject:

 [quote](#)

Well , Mr. Robinson , I think you blew the hell out of your NDA . 😊

Posts: 113

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[profile](#) [8:08 pm](#)

JonC
Lugnut

Joined: 02 Jun 2005
Posts: 9

[Posted: Mon Jun 06, 2005 2:07 am](#) Post subject:

[quote](#)

You got more guts than me Trobllinson. I was there until around march, they had increased recruitment, but the races were always a bit sparse. I am surprised no-one has worked out how to remove their name from the modified exe and released it. Cars that make Martinsville into a superspeedway because the have so little power is not the way I enjoy my racing.

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[profile](#) [8:08 pm](#)

TRobinson
Spark Plug

Joined: 19 Mar 2005
Posts: 27
Location: TX

[Posted: Mon Jun 06, 2005 10:09 am](#) Post subject:

[quote](#)

waitnsee wrote:

Well , Mr. Robinson , I think you blew the hell out of your NDA .



I didn't really blow my NDA, as nothing I told you has anything to do with their future plans in the strictest sense of the word.

And if I did, big whoop! Even they have said publicly that anything going on when I was involved would be nothing like what the finished product would be like.

I doubt I am really saying anything that people smarter than me are able to figure out with all the info that is out there.

And besides, that NDA wouldn't stand up in court anyway. As with most NDA's they would have to prove that what I said was harmful or gave away some sort of proprietary info.

tks,

My name is Tim, and I am a simoholic!

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TMcArthur
Spark Plug

Joined: 05 Apr 2005
Posts: 47

[Posted: Mon Jun 06, 2005 11:06 am](#) Post subject:

[quote](#)

NDA's also go against the Freedom of Speech which even Federal Judges are not willing to take away from anyone without some **HUGELY** good reasons. An attorney would have had to show *immediate* and detrimental loss to get a ruling against anyone doing something like that. The key word is *immediate*, which is impossible since there is no product on the market.

Also the biggest flaws in NDA's and the reason why they just don't stand up in court.

TRobinson
Spark Plug

Joined: 19 Mar 2005
Posts: 27
Location: TX

[Posted: Wed Jun 08, 2005 9:18 pm](#) Post subject:

[quote](#)

Risky gamble if you ask me.

Modders will mod, and continue to mod to some extent. Others will move on to other titles.

As far as damage control? I think it's too late for damage control. You can only shoot yourself in the foot so many times before you have no foot left.

tks,

My name is Tim, and I am a simoholic!

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 [profile](#)  [pm](#)  [www](#)  [IM](#)

 [quote](#)

TMcArthur
Spark Plug

Joined: 05 Apr 2005
Posts: 47

damage control. Wonder why the PR person didnt make this statement for him? Im curious if even JH is still backing First at this point... any wise investor would have pulled out by now and JH didnt make money by making bad investment decisions.

Last edited by TMcArthur on Wed Jun 08, 2005 11:13 pm; edited 2 times in total

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[profile](#) 8:55 pm

TRobinson
Spark Plug

[Posted: Wed Jun 08, 2005 10:55 pm](#) Post subject: Re: Damage Control

[quote](#)

QS wrote:

Joined: 19 Mar 2005
Posts: 27
Location: TX

They even deleted all the Lawsuit text from the Archives. out of sight , out of mind! 

He noticed, and I verified it.

This gets crazier and crazier.

tks,

My name is Tim, and I am a simoholic!

TRobinson
Spark Plug

[Posted: Wed Jun 22, 2005 8:35 pm](#) Post subject:

[quote](#)

This is absolutely incredible.

Joined: 19 Mar 2005
Posts: 27
Location: TX

The name change I understand, since they had so much bad press, that makes sense to a certain degree.

The rest of this is pure BS.

They clearly need new counsel, because they are getting some bad advice, IMHO.

Hopefully they aren't paying too much.

tks,

My name is Tim, and I am a simoholic!

WheelMan
Spark Plug

[Posted: Thu Jun 23, 2005 6:32 pm](#) Post subject: OPEN INVITATION TO ALL FIR\$T BETA TESTERS PAST/PRESENT

[quote](#)

In light of what of the recent news that The UsPits.com is now being harrassed by Fir\$t Racing, or whatever their name is now I invite all current and past Fir\$t Racing beta testers who are dissatisfied with Fir\$t (or whoever they are) to post their comments and experiences here at Fir\$t-Racing-Sucks.com

Post anonymously, how are they going to track you? Why not share your experiences? Know that you are welcome. Flee the dark side.

One side of the coin has equal value to the other. Let the judge decide which side should be face up in this case.

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[profile](#) 8:25 pm

JorghBerghmeister
Spark Plug

[Posted: Thu Jun 23, 2005 9:25 pm](#) Post subject:

[quote](#)

addresses posted earlier...
Joined: 25 Mar 2005
Posts: 65

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TMan66
Spark Plug

[Posted: Fri Jun 24, 2005 3:07 am](#) Post subject:

 [quote](#)

LOL! I doubt that First is responsible for THIS site ROFLMAO!

Joined: 14 Apr 2005
Posts: 72

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JorghBerghmeister
Spark Plug

[Posted: Fri Jun 24, 2005 3:29 am](#) Post subject:

 [quote](#)

I'm not saying they're responsible, I'm saying they probably know of this website...

Joined: 25 Mar 2005
Posts: 65

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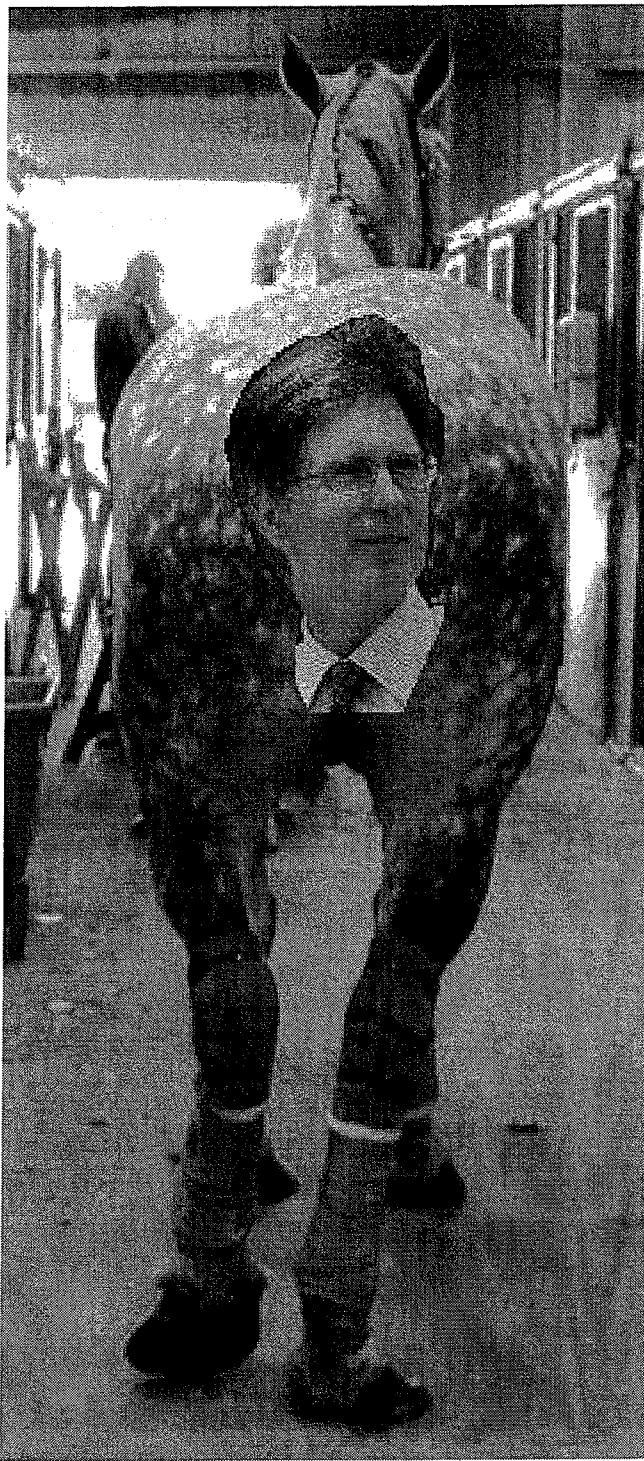
[profile](#) [pm](#)

TMan66
Spark Plug

[Posted: Fri Jun 24, 2005 3:31 am](#) Post subject:

 [quote](#)

Joined: 14 Apr 2005
Posts: 72



TMan66
OW-Racing.com
Torn8oAlley.com

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TRobinson
Spark Plug

Joined: 19 Mar 2005
Posts: 27
Location: TX

[Posted: Fri Jun 24, 2005 8:38 pm](#) Post subject:

 [quote](#)

JorghBerghmeister wrote:

I'm not saying they're responsible, I'm saying they probably know of this website...

[sarcasm mode]

You really think they know about this site?

[/sarcasm mode]

The more you talk, the less you really say!

I happen to know who owns this site, and will bet you a year's salary that it isn't iRacing/FIRST!

tks,

My name is Tim, and I am a simoholic!

TRobinson
Spark Plug

Joined: 19 Mar 2005
Posts: 27
Location: TX

[Posted: Fri Jun 24, 2005 10:34 pm](#) Post subject:

 [quote](#)

That didn't take long!!

LOL

Like the admin over there said, it is amazing that the guys from FIRST/iRacing weren't smart enough to buy *sucks domains.

Those boys are in need of some help!

tks,

My name is Tim, and I am a simoholic!

TMan66
Spark Plug

Joined: 14 Apr 2005
Posts: 72

[Posted: Mon Jul 25, 2005 5:26 pm](#) Post subject:

 [quote](#)

I will say this, to administer a forum that is very popular would be a difficult task. That RSC was/is able to do that is worthy of note whether or not I agree with their 'political' stance if you will. I have to imagine that at some point, people are confering and/or making unilateral decisions about what can, should, and can't be posted. Considering that they would not be paid (they are unpaid right?) to do such a thing, at some point it has to be difficult to control and remain objective.

Don't get me wrong, I prefer to see both sides of the debate in a healthy environment and I certainly disagree with RSC's methods, but I do have a measure of respect for what they had to deal with in terms of numbers. It has to be difficult at times given the passions involved on both sides.

TMan66
OW-Racing.com
Torn8oAlley.com

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 [profile](#)  [8:28 pm](#)  [email](#)  [www](#)

TRobinson
Spark Plug

[Posted: Mon Jul 25, 2005 8:28 pm](#) Post subject:

 [quote](#)

Joined: 19 Mar 2005
Posts: 27
Location: TX

Although this site has a definite slant towards being anti-first, it would appear to me that it has remained fairly neutral in the whole mess.

Admittedly, the name of the site would suggest complete anti-first, but I think the admins/moderators have done a decent job of letting people speak what they have to say.

There are still some, like ole Bergie, though, who just don't get it, have their heads so far up DK's ***, that they can't see the forest for the trees.

And in terms of RSC being so restrictive, that's hooey!! It's simply run by the equivalent of the Left Wing bleeding hearts we have in this country. 99% of the admins don't have any idea what a good, open debate can be. It has become simply too easy for them to ban people for no apparent good reason. The whole admin community should remain as impartial as possible and at least make an attempt at using good judgement, which they have not done, IMHO!

And Jorgie, why can't you join something using your real name? Too afraid that you might be exposed? Yer just as lame as the rest who post under fake names like Razorback One! You now who he is right? He sometimes goes by the name Fenway (way too obvious), and when it's convenient, he actually uses his real name. Have you figured it out yet?

Sure you have, it's your other buddy, John Henry!!

As it says at the top of this place, DK is just John Henry's puppet!!

tks,

My name is Tim, and I am a simoholic!

WITNESSETH

WHEREAS, Company possesses certain valuable and confidential information relating to its tentatively titled product, "FIRST-Racing.net", (the "Product"); including but not limited to specifications and product features of said Product (the "Information"); and

WHEREAS, Company is willing to provide the Receiving Party, on a confidential basis, with some of its Information, so as to allow Company and the Receiving Party to enter into beta testing the Product; and

WHEREAS, the Receiving Party is willing to accept Company's disclosure of Information on a confidential basis, as provided for hereunder.

NOW, THEREFORE, in view of the foregoing premises which are hereby incorporated as a part of the Agreement, and in consideration of the mutual promises contained herein, Company and the Receiving Party hereby agree as follows:

1. Company shall disclose either orally or in written form primarily on its beta website such of the Information as it deems necessary to facilitate its beta testing with the Receiving Party as stated above, and the Receiving Party shall accept and hold such Information in confidence in accordance with the provisions of Paragraph 2 hereof. Upon the request at any time by Company, the Receiving Party shall promptly return to Company all Information disclosed in written or tangible form, together with all copies thereof.

2. Without prior written consent of Company, the Receiving Party shall neither disclose to any third party any or all of the Information disclosed by Company hereunder, including the existence of the Product, or permit any such third party to have access to such Information, nor use such Information for any purpose other than stated above and shall limit internal dissemination of the Information within its own organization to individuals whose duties justify the need to know such Information, and then only if there is a clear understanding with such individuals of their obligation to maintain the confidentiality of such Information and to restrict the use of such Information to the purpose herein specified. Such obligations of confidentiality shall continue until such a time as the Information becomes public knowledge without fault on the part of the Receiving Party. In addition, The Receiving Party acknowledges by signing this document that they are not under the employ, or beta testing, for any third party developing or producing Racing or Driving games or simulations.

3. The parties hereto understand that each may now market or have under development products which are competitive with products or services now offered or which may be offered by the other. Subject to the terms and conditions of this Agreement, discussions and/or communications between the parties hereto will not serve to impair the right of either party to develop, make, use, procure, and/or market products or services now or in the future which may be competitive with those offered by the other, nor require either party to disclose any planning or other information to the other.

4. For the purpose of keeping the Information confidential, the Receiving Party shall use efforts fully commensurate with those which the Receiving Party employs for the protection of corresponding information of Receiving Party, but the use of such efforts shall not constitute a defense in the event that any of the Information is not kept confidential in accordance with the terms of this Agreement.

5. The Receiving Party represents and warrants to Company that it is not a party to any other agreement or under any obligation to any third party which would prevent it from entering into this Agreement or which would adversely affect this Agreement, or the Receiving Party's compliance with any of the undertakings set forth herein and also represents and warrants that the Receiving Party has no relationship other than that of being a customer with any game company or concern.

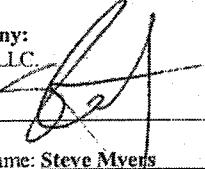
6. This disclosure of Information by Company to the Receiving Party shall not result in any obligation on the part of either party to enter into any future agreement or to undertake any other obligation not set forth in a written agreement signed by the parties hereto.

7. The Receiving Party shall be held expressly liable for any damages sustained by the Company due a breach of this agreement by the Receiving Party. The Receiving Party may also be held liable for damages sustained by the Company due to a release of or dissemination of confidential information, proprietary information, intellectual property or software. The Receiving Party hereby acknowledges that such information, software and intellectual property in development is the result of great expense by the Company and acknowledges that future income of the Company could be adversely impacted by the release or dissemination of proprietary intellectual property.

8. This Agreement contains the entire understanding between parties with respect to the matters contemplated herein and supersedes all previous written and oral negotiations, commitments, and understandings. This Agreement cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the parties hereto and making specific reference to this Agreement.

IN WITNESS WHEREOF, Company and the Receiving Party have caused this Agreement to be executed, as of the date first above written.

Company:
FIRST LLC

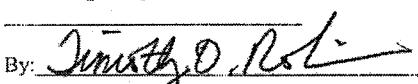
By: 

Print Name: Steve Myers

Title: Vice President of Operations

Date: 12/14/04

Receiving Party:

By: 

Print Name: TIMOTHY O. ROBINSON

Title: OWNER, OWN-RACING.COM

Date: 12/23/04

ROBINSON DEPOSITION
EXHIBIT 12

Exhibit 12 is a physical CD-ROM. A copy will be provided to the court upon request.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

iRACING.COM MOTORSPORT SIMULATIONS LLC,)	
a Delaware Limited Liability Company, Plaintiff)	
)	
V.)	Civil Action No.
)	05-11639 NG
TIM ROBINSON, individually and d/b/a)	
<u>www.ow-racing.com</u> and <u>www.torn8alley.com</u> .)	
Defendant)	

DEFENDANT TIM ROBINSON'S ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES

Interrogatory No. 1: Identify all applications you have created or participated in creating, which applications: (a) derive from, transform or otherwise modify NASCAR® 2003 source code; or (b) defeat NASCAR® 2003's copy protection.

Answer: I do not have access to any source code associated with NASCAR®2003, therefore I have not created or participated in creating any applications which (a) derive from, transform or otherwise modify NASCAR®2003 source code or (b) defeat NASCAR®2003's copy protection.

Interrogatory No. 2: Identify all applications you have used that: (a) derive from, transform or otherwise modify NASCAR® 2003 source code; or (b) defeat NASCAR® 2003's copy protection

Answer: I do not have access to any source code associated with NASCAR®2003, and I am not aware of any applications that I use or have used that (a) derive from, transform or otherwise modify NASCAR®2003 source code or (b) defeat NASCAR®2003's copy protection.

Interrogatory No. 3: Identify each and every person who participated in the creation of the NASCAR® 2003 Modifications, and, for each such person, identify the manner in which they participated.

Answer: According to ¶ 6 of Definitions and Instructions, this answer would be "Not Applicable."

Interrogatory No. 4: Identify each and every person who participated in the distribution of the NASCAR® 2003 Modifications, and, for each person, identify the manner in which they participated.

Answer: According to ¶ 6 of Definitions and Instructions, this answer would be "Not Applicable."

Interrogatory No. 5: Identify any hex editing tools or other reverse engineering tools used in the creation of the NASCAR® 2003 Modifications and the source(s) from which each such tool was obtained.

Answer: I currently use a program named Ultra Edit for hex editing when the need arises. I purchased my copy of Ultra Edit from www.ultraedit.com.

Interrogatory No. 6: Identify all websites or domain names through which you have offered the NASCAR® 2003 Modifications for download.

Answer: As previously noted, www.ow-racing.com, and www.tom8oalley.com are the only two websites where NASCAR®2003 mods, namely the OWSC Sprint Car Mod and OWR05 Mod were made available.

Interrogatory No. 7: For each website you identified in response to Interrogatory No. 6, identify all persons who contribute or have contributed to its content or existence, including, but not limited to, its owners, administrators and contributing members. For each such person, identify: (a) his or her particular role(s) with respect to each website; (b) the privileges that person has on each website to which he or she contributes.

Answer: I am solely responsible for the existence of the two previously mentioned websites. I am also solely responsible for the downloadable content of each of the mentioned websites. Registered members also contribute to the content by posting/replying to topics in the discussion

forums. A list of registered members is can be found at each of the following links respectively, http://torn8oalley.com/index.php?name=Members_List and http://www.ow-racing.com.com/index.php?name=Members_List

As it relates to www.torn8oalley.com, there is one additional discussion forum administrator, username T-Man66. He only has access to discussion forums, and is also responsible for the FAQ portion of that website.

As it relates to www.ow-racing.com, there are three additional discussion forum administrators, usernames MaxTone, TMan66, and JoeB. They are limited to discussion forum administration privileges only.

Interrogatory No. 8: Identify all persons who are wholly or partially responsible for posting the NASCAR® 2003 Modifications for download on any of the websites you identified in response to Interrogatory No. 6.

Answer: I am solely responsible for the downloadable content on the two previously mentioned websites.

Interrogatory No. 9: Identify all persons who are wholly or partially responsible for hyperlinking to the NASCAR® 2003 Modifications (or to websites that offer the NASCAR® 2003 Modifications for download) from any of the websites you identified in response to Interrogatory No. 6.

Answer: Hyperlinking to downloadable content, also known as leeching, on the two previously mentioned sites is not allowed. Hyperlinking to the front page of each site is allowed, and I am not specifically aware of how many or how few websites post a link to each website.

Interrogatory No. 10: Identify all persons you know who downloaded any of the NASCAR® 2003 Modifications.

Answer: I have no way of telling whom has downloaded what from either of the two websites mentioned.

Interrogatory No. 11: Identify all communications between you and iRacing.

Answer: Emails were exchanged on the following dates:

<u>2005 Date</u>	<u>From</u>
Mar 04	Steve Myers
Mar 04	Tim Robinson
Mar 07	Steve Myers
Mar 15	Steve Myers
Mar 18	Steve Myers
Apr 01	Bret Roubinek
Apr 08	Tim Robinson
Apr 11	Bret Roubinek
May 24	Tim Robinson
May 24	Bret Roubinek
Jun 02	Bret Roubinek
Jun 02	Tim Robinson
Jun 09	Tim Robinson
Jun 09	Bret Roubinek
Jun 10	Bret Roubinek
Jun 22	Tim Robinson
Jun 22	Bret Roubinek

I also had a couple of telephone calls with Brett Roubinek, VP of Marketing, but don't recall exactly what days those calls took place.

Interrogatory No. 12: Identify the person(s) who sent you Steve Myers' post from the FIRST beta forum, which post is attached to these Interrogatories as Exhibit A.

Answer: I do not know who that info came from, as it was from someone I do not even know, nor do I even remember the username used.. It came in the form of a Private Message on any one of a number of discussion forums that I subscribe to. More importantly, the information is not relevant to the question at hand. It is merely an attempt by iRacing.com to have me rat out one of their beta testers. I believe the information came from a user at Race Sim Central (forum.rscnet.org) but am not 100% positive. I have checked the discussion forums I regularly frequent, and have not found anything relevant.

The foregoing answers to interrogatories are made and given under the pains and penalties of perjury this 11/3 day of November 2005.

Timothy D. Robinson
Timothy Robinson

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

iRACING.COM MOTORSPORT SIMULATIONS LLC,)
a Delaware Limited Liability Company, Plaintiff)
)
V.) Civil Action No.
) 05-11639 NG
TIM ROBINSON, individually and d/b/a)
www.ow-racing.com and www.torn8alley.com,)
Defendant)

**DEFENDANT TIM ROBINSON'S RESPONSES TO
PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**

Req. No. 2: Produce each and every document discussing, referring or relating to NASCARO 2003, including any modifications, transformative works or derivative works thereof.

Response: No objection. Plaintiff already has copies of the owr2k5_v1.0.0.1.zip file, the owsc_nocd_temp.zip file, and the NASCAR2003 game files.

Defendant will copy to CD's and produce copies of computer files of tracks, setups and cars that he has made. Collectively this may require copying as many as five thousand (5000) files. In the meantime, some of the cars are available to plaintiff, and can be downloaded by plaintiff, on the www.torn8alley web site.

Defendant also has replays of actual races, that collectively take up well over 10 gigabyte of space and would require a minimum of 40 cd's to copy; but defendant does not believe these files to be within the intended scope of the request.

Req. No. 3: Produce each and every document discussing, referring or relating to any hex editing tools or other reverse engineering tools you used with respect to NASCAR® 2003.

Response: The only hex editing tool that defendant has is "UltraEdit." that defendant purchased online. Defendant is not authorized to distribute copies, but it is available for purchase by plaintiff at www.ultraedit.com.

Req. No. 4: Produce each and every document discussing, referring or relating to the End User License Agreement ("EULA") for NASCAR® 2003.

Response: Defendant has no documents beyond the EULA itself, a copy of which is included with the complaint, and the documents that are available to plaintiff for copying from www.FirstRacingSucks.com.

Req. No. 5: Produce each and every document discussing, referring or relating to the applications called "owr2k5_v1.0.0.1.zip" and "owsc_nocd_temp.zip."

Response: The referenced files are "zip" files; they are not application files. Plaintiff already has copies of both zip files.

Req. No. 6: Produce each and every document discussing, referring or relating to any and all downloads offered on www.ow-racing.com, www.torn8alley.com, and/or www.first-racing-sucks.com, which downloads: (a) derive from, transform or otherwise modify NASCAR® 2003 source code; or (b) defeat NASCAR® 2003's copy protection.

Response: No such downloads are being offered, or have been offered since commencement of this litigation.

Req. No. 7: Produce each and every document discussing, referring or relating to the beta version of racing software that: (a) iRacing was developing but had not yet released; and (b) you tested pursuant to the terms and conditions of the Confidential Disclosure Agreement.

Response: Apart from the original downloadable executable, and the Confidential Disclosure Agreement, that plaintiff already have, defendant has no documents responsive to this request.

Req. No. 8: Produce each and every document discussing, referring or relating to any communication between you and iRacing.

Response: No objection. These documents have been produced.

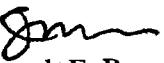
Req. No. 9: Produce each and every document you identified in your responses to the First Interrogatories that iRacing served on you contemporaneously with these Requests for the Production of Documents.

Response: No objection. These documents have been produced.

Req. No. 10: Produce each and every document to which you referred in formulating your responses to the First Interrogatories that IPC served on you contemporaneously with these Requests for the Production of Documents.

Response: Defendant has no recollection of receiving any interrogatories from "IPC."

By his attorneys,


Joseph F. Ryan BBO.# 435720
Lyne Woodworth & Evarts LLP
600 Atlantic Avenue
Boston, MA 02210
Telephone 617/523-6655 - Telecopy 617/248-9877
E-mail: Jryan@LWELaw.com

I hereby certify that a true copy of the above
document was served upon the attorney of record
of each other party by mail on 11.21.2005

Joseph F. Ryan